

COUNTY COURT OF THE STATE OF NEW YORK
COUNTY OF SUFFOLK - PART 7

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PEOPLE OF THE STATE OF NEW YORK,

Case No.:
539-07

-against-

LAMAR WHITEHEAD,

Defendant

-----x
TRIAL TRANSCRIPT

March 25, 2008
210 Center Drive
Riverhead, New York

B E F O R E :

THE HONORABLE JAMES HUDSON,
Suffolk County Judge

For the People:

THOMAS J. SPOTA, ESQ.
District Attorney of Suffolk County
Economic Crimes Bureau
North County Complex
Building 77, Veterans Memorial Highway
Hauppauge, New York 1788
BY: RAPHAEL PEARL, ESQ.,
BY: JODI FRANZESE, ESQ.,
Assistant District Attorneys

For the Defendant:

The Law Offices of
WILLIAM KEAHON, ESQ.
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Reported By:
Jennifer Maue,
Senior Court Reporter

FILED

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CLERK OF SUFFOLK COUNTY

1 People v. Lamar Whitehead

2 (The following occurred outside the
3 presence of the jury):

4 THE CLERK: Case on trial, People
5 versus Whitehead. All parties present outside
6 the presence of the jury.

7 THE COURT: This is Juror No. 9.

8 I understand that you have -- I'm
9 shown a statement from our -- Medical Center
10 Fort Salonga Road, Northport.

11 Again, I'm very sorry to have to
12 even go into your physical condition at all.
13 Its is a private matter, I have a note from
14 Muia Nicola, indicating that Juror No. 9 has
15 strep throat and this is a request to excuse
16 Juror No. 9 from jury duty from today, that
17 is -- from March 24th. To return on the 26th.

18 The question is, do you feel as a
19 result -- have you been told that you're
20 contagious?

21 JUROR NO. 9: Yes.

22 THE COURT: You're going to be in a
23 closed room with our other jurors.

24 JUROR NO. 9: I did ask, because
25 they did -- the quick test I said -- I told

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2 them I had jury duty. I said if it comes back
3 with a sore throat, he said no, with the
4 antibiotics, it will be fine. You could go
5 back. But he said if it comes back strep,
6 you're still contagious for another few days
7 even though you're on antibiotics.

8 THE COURT: I could tell you don't
9 seem to be feeling very good, you're in a lot
10 of pain.

11 JUROR NO. 9: Yes.

12 THE COURT: Sorry to bring you in.
13 Any questions from counsel.

14 MR. KEAHON: I have none. Hope you
15 feel better. I want to express all of our
16 thanks to you, for sitting on this jury.

17 JUROR NO. 9: Thank you.

18 MR. KEAHON: You're a trooper.

19 THE COURT: Do we have a consent to
20 substitution?

21 MR. KEAHON: You have my consent.

22 MR. PEARL: (Nods)

23 THE COURT: We have consent for a
24 substitution.

25 (Juror No. 9 was excused)

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2 (The following occurred in open
3 court):

4 THE CLERK: Come to order, please,
5 this court is back in session.

6 (Pause)

7 THE CLERK: Remain seated, come to
8 order.

9 Case on trial, People versus
10 Whitehead. All parties present outside the
11 presence of the jury.

12 THE COURT: Thank you.

13 The record will reflect after
14 conference with Juror No. 9, she established
15 to the satisfaction of counsel, that she was
16 ill and unable to continue in her duties.
17 Counsel for both the defense and the people
18 stipulate to her being discharged and a
19 substitution of alternate number one.

20 So agreed, counsel?

21 MR. KEAHON: Judge, she produced a
22 letter from a doctor asking her to be excused.
23 She indicated to us, that because of the
24 condition and the medication she was
25 taking -- I forget the word that she used, if

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2 she had to sit with a group of people she
3 could --

4 THE COURT: She was quite
5 contagious.

6 MR. KEAHON: Contagious, yes.

7 THE COURT: The people consent, as
8 well, to her removal?

9 MR. PEARL: Yes, your Honor.

10 THE COURT: Thank you.

11 We'll bring in our jury unless
12 there is something else to place on the
13 record.

14 MR. KEAHON: Yes, judge. I have to
15 go through some of these charts with the
16 court.

17 THE COURT: Yes.

18 MR. KEAHON: Number one -- if we
19 could close that door.

20 THE COURT: Thank you.

21 MR. KEAHON: People's proposed
22 Exhibit 189. It indicates, as the court can
23 see, Wachnik E-Loan auto loan application
24 paperwork, and then it recites as if it is a
25 witness, the address on the application is 925

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2 Prospect. Same street address, Maria Marcale,
3 David Ridenour. Same street address as Nerina
4 Sperl E-Loan.

5 It is actually a speaking exhibit,
6 and I object to it.

7 THE COURT: Do you intend to offer
8 this as an exhibit or keep this for your
9 closing remarks?

10 MR. PEARL: I was going to offer
11 this one as a demonstrative aid. It is
12 eliciting statements from documents that are
13 in evidence. In this case, it is the actual
14 application. The Wachnik E-Loan application,
15 is People's 40, I think, 41. Then the rest of
16 the ones were based on the phone records we
17 went over.

18 THE COURT: I have to reserve
19 decision, Mr. Keahon. I don't know what the
20 testimony is that will be offered to lay the
21 groundwork for the possible introduction of
22 that, and whether or not the witness will be
23 able to testify. As to whether or not that
24 will assist you in their testimony, or whether
25 or not it would impermissibly be marshaling

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2 other evidence. If I feel it to be the
3 latter, I would exclude it.

4 MR. KEAHON: Respectfully, judge,
5 the witness cannot testify, it is my position,
6 from the stand, that an address on an
7 application is 925 Prospect.

8 THE COURT: Which witness would
9 this be?

10 MR. PEARL: Det. Gabriele.
11 So we can get moving, I won't use
12 this one. I'll just use the phone spray
13 analysis.

14 THE COURT: Thank you. I do feel
15 it is somewhat problematic. I'm obliged to
16 you.

17 THE COURT OFFICER: That was
18 Exhibit 189.

19 MR. KEAHON: Exhibit 195 is marked
20 for identification, judge. Once again, it is
21 a speaking exhibit. I'd object.

22 THE COURT: Do you also intend to
23 introduce this through Det. Gabriele?

24 MR. PEARL: Correct, your Honor.

25 THE COURT: For the same reason

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2 that the court expressed its concern under
3 189, the same problem could result under 195.
4 It is premature for the court to rule in the
5 absence of the preliminary questions leading
6 up to same.

7 Be guided by the court, Mr. Pearl,
8 when it comes to that. If I consider this as
9 marshaling evidence, it would be excluded.

10 MR. PEARL: Based on our conference
11 last Friday, there was a difference between
12 these charts, and the charts that demonstrate
13 the spray analysis.

14 THE COURT: Correct.

15 MR. KEAHON: Your Honor, People's
16 Exhibit 190, it indicates Lamar Whitehead's
17 cell phone. If anything, it should say
18 "subscriber Lamar Whitehead".

19 The word choice on the chart, the
20 way it is placed, infers very clearly that
21 Lamar Whitehead is the only one that ever used
22 the phone and had possession of it.

23 THE COURT: Last week, I thought
24 the objection was to use of the word
25 "personal".

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2 MR. KEAHON: It was, until I saw
3 this.

4 THE COURT: As far as that
5 reference itself, Mr. Keahon, your argument
6 does not -- your exception would be noted.

7 Is there any other aspect to that
8 chart?

9 MR. KEAHON: Down on the same
10 chart, it says, in a little box, it says
11 "Lamar Whitehead's cell phone". It should say
12 the "subscriber cell phone in the name of
13 Lamar Whitehead".

14 THE COURT: We have to agree to
15 disagree, Mr. Keahon. The use of the term
16 "personal", I agree, is a characterization.

17 The use of the term "Lamar
18 Whitehead cell phone" and "subscriber Lamar
19 Whitehead" is a difference without a
20 distinction, and I would note your exception.

21 MR. KEAHON: Thank you, judge.

22 I make the same argument on
23 People's 197, as far as Lamar Whitehead's cell
24 phone. The court has already ruled. But for
25 the record, I'm objecting.

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2 THE COURT: Thank you. For the
3 reasons stated heretofore, that is not a
4 characterization but merely a recitation of
5 evidence, and if the witness could testify
6 that that would assist them in explaining
7 their testimony before the jury, then it would
8 be used as a demonstrative exhibit. With
9 that, at the conclusion of the case and during
10 the court's instruction, the jury will be
11 admonished it does not constitute evidence in
12 and of itself.

13 MR. PEARL: On the exhibit it says
14 "telephone number", crossed out in black, with
15 "M & T Auto" blanked out, E-loan application
16 in Michael Nolan's name. It is a speaking
17 exhibit. I object.

18 THE COURT: Mr. Pearl, that
19 reference, that language in the lower left
20 hand corner of that exhibit, once again, the
21 number?

22 MR. KEAHON: 197.

23 THE COURT: Thank you.

24 MR. PEARL: Last week I think we
25 used the word "associated". I redacted the

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2 word "associated". I didn't think there was
3 an issue with the telephone number. I could
4 pull the exhibit, show it to the detective,
5 and ask, "What number is on this application?
6 Did you see this number anywhere else?" And
7 go through how the phone spray analysis is.
8 I'm just short-circuiting through a chart.

9 I would have removed it, if -- on
10 Friday, if I knew Mr. Keahon didn't want it in
11 there.

12 THE COURT: Once again, it becomes
13 a matter of whether or not the witness can
14 properly testify that this would assist them
15 in explaining their testimony. If I consider
16 it marshaling evidence, I'll exclude it at
17 that point in time.

18 MR. KEAHON: Thank you, judge.

19 Once again, 199, the same
20 objection. Where it says Lamar Whitehead's
21 cell phone, another area it says Lamar
22 Whitehead's cell phone. I know the court has
23 ruled on the previous exhibits, but I am, for
24 the record, objecting.

25 THE COURT: Thank you.

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2 MR. KEAHON: Once again, in the
3 same exhibit, it says E-Loan Auto Loan
4 application, in Nerina Sperl's name, Aero Beep
5 telephone number (212)591-0575 is listed.

6 It is a speaking exhibit.

7 THE COURT: Thank you. As far as
8 ruling on its admissibility, as a
9 demonstrative exhibit, once again I would have
10 to wait to hear the witness' testimony. If
11 you could confine your objections to new
12 matters, Mr. Keahon.

13 You were very eloquent, as always,
14 on behalf of your client, in stating your
15 objections to certain portions of these
16 proposed exhibits last week. I think to allow
17 reargument once again, at this point in time,
18 I think would be inappropriate. So any new
19 matters?

20 MR. KEAHON: All right, judge.

21 With the remaining exhibits, 206,
22 208, 194, 193, 196, 209, 205, 207, and 198,
23 they all contain the word "Lamar Whitehead's
24 cell phone". I object to that. And they all
25 contain speaking exhibits with printed matter

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2 on it, relating to other exhibits and what
3 they are and where they are not.

4 So with that, I take objection to
5 each of the exhibits that I have placed on the
6 record.

7 THE COURT: So noted. As
8 indicated, the court has ruled as to a portion
9 of that, particularly the reference to the
10 cell phone number allegedly subscribed to by
11 Mr. Whitehead. The other information
12 contained therein, I would have to hear the
13 witness' testimony leading up to the attempt
14 to introduce this as a demonstrative exhibit.
15 If I feel it will assist them in explaining
16 their testimony, it will be admitted. If I
17 feel it is marshaling evidence, it will be
18 whatever.

19 THE COURT: Do you have anything
20 else to place on the record?

21 MR. KEAHON: I'm going to object to
22 any question by Mr. Pearl that indicates,
23 "What is the significance of", when he asks
24 the detective to relate these charts. I think
25 that is improper.

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2 Secondly, again, that the cell
3 phone where my client is the subscriber is in
4 fact his personal cell phone. I would object
5 to that. And that is it, judge.

6 THE COURT: Thank you. I'll take
7 that as a motion *in limine*, seeking an order
8 to seek to limit the people from using the
9 term "significance of" and information
10 regarding the cell phone.

11 MR. PEARL: Judge, I stood in our
12 in conference in chambers, and I told Det.
13 Gabriele to try to remember to refrain from
14 referring to defendant's personal cell phone
15 as such. Just to remind him. Outside. I
16 hope it doesn't offend any court's issue. You
17 gave him an order in chambers.

18 He's going to try. I'll word my
19 questions so it doesn't happen.

20 THE COURT: The court is obliged to
21 you carrying out the court's will in directing
22 the witness to refrain from such statements in
23 in front of the jury, which I feel is a
24 characterization of evidence and not a
25 recitation of evidence. Thank you.

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2 Is there anything else to place on
3 the record?

4 MR. KEAHON: Nothing, your Honor.

5 THE COURT: All that will remain is
6 alternate one will be seated and has been
7 instructed to take number nine's seat. There
8 will be the formal substitution on the record
9 at this time.

10 MR. KEAHON: Great.

11 THE COURT: Thank you.

12 MR. PEARL: Judge, I want to make
13 sure I have the right charts I took out. I
14 have the numbers, and I just wanted to make
15 sure that...

16 THE COURT: Officer, my compliments
17 to the jury. Their presence is requested.

18 THE COURT OFFICER: Yes, your
19 Honor.

20 190, 193, 194, 195, 196, 197, 198,
21 199, 205, 206, 207, 208 and 209.

22 (Pause)

23 THE COURT OFFICER: The jury is
24 entering.

25 THE COURT: All rise, please.

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2 (The following occurred with the
3 jury present):

4 THE CLERK: Case on trial, People
5 versus Whitehead. The jury and all parties
6 are present. Counsel waive the roll.

7 THE COURT: Thank you all, once
8 again.

9 As you can see, we have a
10 substitution. And the record should reflect,
11 Mr. Avitabile, the substitution of Alternate
12 No. 1 for Juror No. 9, who has been
13 discharged.

14 THE CLERK: Yes.

15 THE COURT: The people are ready to
16 proceed.

17 MR. PEARL: Yes, your Honor, thank
18 you.

19 THE COURT: You may recall your
20 witness to the stand.

21 MR. PEARL: Det. Gabriele, your
22 Honor.

23 THE COURT: You may inquire of the
24 witness.

25 THE CLERK: Detective, I remind

1 DIRECT/Gabriele

2 you you are still under oath.

3 CONTINUING DIRECT EXAMINATION

4 BY MR PEARL:

5 Q. Detective, did there come a time that you
6 had an opportunity to review the Sprint cell phone
7 record with the subscriber, Lamar Whitehead?

8 A. Yes, there was.

9 Q. Did there also come a time you reviewed
10 the Sprint cell phone with the name of Wojcieh
11 Wachnik?

12 A. Yes, there was.

13 Q. Did there also come a time you reviewed
14 phone records concerning a T-Mobile phone?

15 A. Yes, I did.

16 Q. In fact those are the records you
17 previously prepared phone spray analysis charts on?

18 A. Yes, they were.

19 Q. There also came a time I asked you on
20 Friday, you reviewed all the financial records,
21 involved in this case?

22 A. That is correct.

23 Q. From E-Loan, from M & T, from Chase, and
24 from Commerce?

25 A. That is correct.

1 DIRECT/Gabriele

2 Q. Did there come a time that you prepared
3 charts, with the phone records and financial
4 institutions?

5 A. Yes, there was.

6 MR. PEARL: Your Honor, may I have
7 People's 190, 193, 194, 195, 196, 197, 198,
8 199, 205, 206, 207, 208 and 209 and show them
9 to Det. Gabriele, please.

10 THE COURT: Thank you. You may
11 step down off the stand to review that.

12 (The Witness exits the stand)

13 Q. Detective, do you recognize those
14 documents?

15 A. Yes, I do.

16 Q. What if any do you recognize those
17 exhibits to be?

18 A. Those are the charts that I prepared.

19 Q. And they are based on the evidence -- that
20 has already been introduced at trial?

21 A. Yes, they are.

22 Q. And in fact, would those charts assist you
23 in testifying before the jury today about the
24 relationship of those various phone records with the
25 financial institutions?

1 DIRECT/Gabriele

2 A. Yes, they would.

3 MR. PEARL: Your Honor, based on
4 that foundation, People would move those
5 exhibits into evidence.

6 THE COURT: Thank you.

7 MR. PEARL: As demonstrative
8 exhibits only.

9 MR. KEAHON: No foundation has been
10 laid. I object.

11 THE COURT: Sustain the objection.

12 Q. Detective, what if anything did you
13 prepare those exhibits on, base those exhibits on?

14 A. I based those exhibits on bank records,
15 financial institution records, cell phone record.

16 Q. Specifically what bank records?

17 A. M & T Bank, Chase Bank, Commerce Bank,
18 First Internet Bank, E-Loan, Capital One Auto
19 Finance.

20 Q. What phone records did you base those
21 records on?

22 A. Sprint, Sprint-Nextel, T-Mobile.

23 Q. What if anything did you do with those
24 records in conjunction with those charts?

25 A. Could you rephrase the question? I'm not

1 DIRECT/Gabriele

2 sure I understand.

3 Q. Upon reviewing those records, what if
4 anything did you do with those records in conjunction
5 with those charts?

6 A. I matched up the corresponding phone
7 numbers with the information that I was able to
8 garner off the bank record.

9 Q. Did you prepare spray analysis charts
10 concerning the various bank institutions in
11 conjunction with the phone records?

12 A. Yes, I did.

13 Q. With those exhibits, those spray analysis
14 charts that you prepared, would they assist you in
15 testifying today?

16 A. Yes, they will.

17 Q. How if at all will they assist you?

18 A. I will be able to look at the charts and
19 link the particular phone numbers with the particular
20 bank documents.

21 MR. PEARL: Your Honor, based on
22 that foundation, People once again move to
23 introduce those same exhibit numbers into
24 evidence. As demonstrative aids.

25 MR. KEAHON: I object.

1 DIRECT/Gabriele

2 THE COURT: If I could see counsel
3 at side bar, please.

4 (The following occurred at side
5 bar):

6 THE COURT: It is the same
7 objection pursuant to *People vs. Bell*. I'll
8 explain the reason for the court's ruling.
9 Pursuant to the CJI charge, a demonstrative
10 exhibit is impermissible to explain other
11 exhibits.

12 What other exhibits does this
13 explain?

14 MR. PEARL: The phone record, and
15 the bank records.

16 THE COURT: I haven't heard
17 reference to some -- I have heard no reference
18 to any exhibits. I've heard reference to
19 phone records.

20 MR. PEARL: I'm sorry. I'm
21 rushing, trying to get us moving. I shouldn't
22 be doing that. I'll refer to the specific
23 exhibit numbers if you want me to.

24 THE COURT: Hasty justice is the
25 mother of misfortune.

1 DIRECT/Gabriele

2 MR. PEARL: I apologize.

3 THE COURT: Thank you.

4 (The following occurred in open

5 court):

6 MR. PEARL: Can I have 47, 48 and
7 49 shown to Det. Gabriele, please? Exhibits
8 47, 48 and 49.

9 (Handing)

10 BY MR. PEARL:

11 Q. Detective, please take a look at those
12 exhibits and can you tell the jury if you recognize
13 them?

14 A. Yes, I do.

15 Q. What do you recognize -- what is the first
16 exhibit in your hand, what number?

17 A. This is 47.

18 Q. What do you recognize 47 to be?

19 A. They're the T-Mobile phone records.

20 Q. What is the phone number associated with
21 that T-Mobile phone record?

22 A. (917)213-9228.

23 Q. And in fact, what if anything did you do
24 with those records concerning the charts, the exhibit
25 numbers I previously placed on the record?

1 DIRECT/Gabriele

2 A. I linked up the phone numbers that
3 appeared on the phone records with the numbers that
4 were off the of the financial institution's records.

5 Q. Take a look at People's 48, please? Do
6 you recognize People's 48.

7 A. Yes, I do.

8 Q. What do you recognize People's 48 to be?

9 A. They're Nextel -- Sprint-Nextel records in
10 the name of Lamar Whitehead.

11 Q. And did you analyze those records?

12 A. Yes, I did.

13 Q. What if anything did you do with that
14 analysis concerning those same exhibit numbers that
15 we have before you?

16 A. I linked up the phone -- phone records off
17 of the Sprint-Nextel phone records, to any other
18 phones involved, as well as the banking records.

19 Q. Can you take a look at the next exhibit,
20 please? What number is that, for the record?

21 A. 49.

22 Q. And what is People's 49, specifically?

23 A. It's Sprint records in the name of Wojcieh
24 Wachnik.

25 Q. What is the next exhibit in your hand,

1 DIRECT/Gabriele

2 Det. Gabriele?

3 A. 49.

4 Q. What if anything is 49?

5 A. It is a Sprint record in the name of
6 Wojcieh Wachnik.

7 Q. What is the phone number associated with
8 those records?

9 A. (347) 623-1549.

10 Q. What if anything did you do with those
11 records concerning the charts that were before you,
12 190 through 209?

13 A. I linked up this phone number with any
14 numbers that I was able to take off the banking
15 institution records.

16 Q. Thank you.

17 MR. PEARL: Can I have People's 14,
18 15, 16, 17, 18 and 19. Those are I believe
19 Chase records. I think they would be in the
20 next pile over.

21 THE COURT OFFICER: People's
22 Exhibits 14 through 19, being shown to the
23 witness.

24 (Handing)

25 MR. PEARL: Thank you.

1 DIRECT/Gabriele

2 MR. PEARL: Officer, in the
3 meantime, I'll be needing 26, 30, 31, 32 and
4 40. When you have a chance?

5 BY MR. PEARL:

6 Q. Detective, do you recognize People's 14
7 through 19?

8 A. Yes, I do.

9 Q. What do you recognize -- what if anything
10 do you recognize those exhibits to be?

11 A. They are bank records from Chase Bank.

12 Q. What is the first exhibit you have in your
13 hand, the number, please?

14 A. Fourteen.

15 Q. And what if anything specifically is that
16 Chase bank record -- who is that Chase record applied
17 to?

18 A. Michael Nolan.

19 Q. Let's look at 15, please. What if
20 anything is 15 specifically?

21 A. It is a Chase bank record in the name of
22 Eric Besso.

23 Q. 16, please?

24 A. Chase Bank record, in the name of Brenda
25 Foley.

1 DIRECT/Gabriele

2 Q. Can you go to the next record, please,
3 what is the number on the back, please?

4 A. 17.

5 Q. What is that specifically?

6 A. That is a Chase bank record in the name of
7 Kathleen March.

8 Q. The next record, please, just refer to the
9 number on the back?

10 A. 18. Chase bank record in the name of
11 Brian Foley.

12 Q. The next exhibit, please?

13 A. Number 19, is a Chase Bank record in the
14 name of Thomas Palladino.

15 MR. PEARL: Can I have those last
16 few exhibits shown to Det. Gabriele, please?

17 THE COURT OFFICER: People's
18 Exhibits 26, 30, 31 and 32 and 42, being shown
19 to the witness.

20 Q. Detective, what is People's 26? Make
21 sure, check the back for the number?

22 A. 26, is a Capital One Auto Finance record
23 in the name of Wojcieh Wachnik.

24 Q. Can you look at the next exhibit, please?
25 What if anything is that exhibit number?

1 DIRECT/Gabriele

2 A. 30. Is an M & T Bank record, in the name
3 of Brian Foley.

4 Q. The next records, please, which is
5 number --

6 A. Thirty-one.

7 Q. No. 31?

8 Q. M & T Bank record, in the name of Briton
9 Lawler?

10 Q. Next exhibit, please?

11 A. 32, M & T Bank record in the name of
12 Michael Nolan.

13 Q. The next record, please?

14 A. 42, is an E-Loan record in the name of
15 Raymond Sperl.

16 Q. What if anything did you do with all those
17 exhibits that you just testified to, the financial
18 institution records, in conjunction with the phone
19 records?

20 A. I analyzed each one of the records for
21 known numbers, and I pulled the phone numbers
22 corresponding to each record off of it, and I matched
23 it up to the aforementioned phone numbers that we
24 had.

25 Q. In fact, did you prepare your charts based

1 DIRECT/Gabriele

2 on the records that you just described?

3 A. Yes, I did.

4 Q. And would those charts assist you in
5 testifying today before this jury?

6 A. Yes, they would.

7 MR. PEARL: At this time, the
8 people move those exhibits into evidence.

9 THE COURT: As demonstrative
10 exhibits.

11 MR. PEARL: Only as demonstrative
12 exhibits.

13 THE COURT: Do you wish to be heard
14 further, Mr. Keahon?

15 MR. KEAHON: Yes, I do. I object.

16 THE COURT: With your objection
17 being noted, they're being allowed in as
18 demonstrative exhibits. If you would mark
19 them so.

20 MR. PEARL: After they are marked,
21 judge, can I have Det. Gabriele step off the
22 stand and use the charts to...

23 THE COURT: Yes.

24 THE COURT OFFICER: People's
25 Exhibits 193, 194, 195, 196, 197, 198, 199,

1 DIRECT/Gabriele

2 and People's Exhibits 205, 206, 207, 208, 209,
3 and 210, marked and received into evidence.

4 (People's Exhibits 193-199, and
5 205-210, marked for identification and
6 received in evidence)

7 THE COURT: Thank you. They are
8 marked as demonstrative exhibits.

9 MR. PEARL: Exhibit 190 is in
10 evidence.

11 THE CLERK: I believe it is 190,
12 not 210.

13 THE COURT: Correct.

14 THE COURT OFFICER: 193, excuse me.

15 MR. PEARL: As 190. The charts up
16 there, 190, 193, 194, 195, 196, 197.

17 THE COURT OFFICER: 190 is also
18 marked and received into evidence.

19 MR. PEARL: So I'm clear 205, 206
20 207, 208, 209.

21 THE COURT: Correct.

22 MR. PEARL: Not 210.

23 THE COURT: Yes.

24 (People's Exhibit 210, previously
25 noted as received in evidence, marked for

1 DIRECT/Gabriele

2 identification only)

3 MR. PEARL: Your Honor, may I use
4 those charts to publish them to the jury and
5 have Det. Gabriele step off the stand?

6 THE COURT: Yes.

7 Ladies and gentlemen of the jury, I
8 will charge you once again, when you are fully
9 instructed on the law, that these constitute
10 not proof or evidence in themselves as they
11 explain other evidence. You're not to
12 consider them as evidence in and of
13 themselves.

14 MR. PEARL: Judge, I ask if the
15 jury can't see.

16 A JUROR: No. Too far.

17 THE COURT: Mr. Keahon, feel free.

18 MR. KEAHON: I'd like my client to
19 be able to see.

20 THE COURT: Perhaps we can move the
21 chairs down, officer.

22 Can we coordinate with Mr. Keahon
23 and Mr. Whitehead, the gentlemen can move
24 down, so they can see the exhibits, as well?

25 MR. PEARL: Can everybody see the

1 DIRECT/Gabriele

2 charts.

3 A JUROR: That is better.

4 THE COURT: Detective, please.

5 (The Witness exits the witness

6 stand)

7 BY MR. PEARL:

8 Q. Det. Gabriele, what if anything is

9 People's 190?

10 A. This particular chart is a chart of
11 Wojcieh Wachnik, Capital One case, in the amount of
12 \$65,000, on 10/13/04.

13 In this particular case, there is a
14 Capital One auto loan application in the name of
15 Wojcieh Wachnik. The address listed on the
16 application is 385 Lexington Avenue, Apartment 4-B,
17 in Brooklyn. There is an address of Teisha Lamont,
18 with a phone number --

19 Q. Detective. Was there a phone number
20 listed on the Capital One Wojcieh Wachnik case?

21 A. (718)512-5016 was the number that was
22 listed on the Capital One auto loan application.

23 Q. What if anything did your analysis show in
24 conjunction with the phone records that are People's
25 47, 48, and 49, that you've previously just

1 DIRECT/Gabriele

2 identified?

3 A. Three particular phone numbers, 346 -- the
4 Sprint Wojcieh Wachnik Sprint phone (347)623-1549.

5 Q. For the records, that is the Sprint phone,
6 with the subscriber Wojcieh Wachnik?

7 A. Correct, correct.

8 That particular phone called into the
9 (718)512-5016 number, 35 times.

10 Q. For the record, what is (718)512-5016?

11 A. That is one of the AeroBeep voicemail
12 boxes.

13 Q. There is a T-Mobile phone listed with the
14 number of (917)213-9228?

15 A. The (917)213-9228 number, T-Mobile phone
16 called into that particular AeroBeep number
17 (718)512-5016, on eleven separate occasions.

18 Q. There is a phone number (718)772-6498,
19 with a subscriber of Lamar Whitehead, correct?

20 A. That is correct.

21 Q. What if anything did the phone analysis
22 show in reference to that phone number?

23 A. That particular phone number, called into
24 the (718)512-5016 number, listed on the Wojcieh
25 Wachnik Capital One auto loan application, on one

1 DIRECT/Gabriele

2 occasion.

3 Q. And did that cell phone, with the
4 subscriber of Lamar Whitehead, call any other numbers
5 on that chart?

6 A. There are fifteen phone calls between the
7 T-Mobile phone, (917)213-9228 and (718)772-6498.

8 Q. That is the phone record contained in
9 People's 48, correct?

10 A. That is correct.

11 Q. Now I'd like to show you --

12 MR. KEAHON: Judge, can we approach
13 for a minute, please.

14 THE COURT: Yes.

15 (The following occurred at side
16 bar):

17 THE COURT: Yes, Mr. Keahon.

18 MR. KEAHON: I object. These items
19 on the left side of the exhibits, have not
20 been set as a foundation for this exhibit.

21 THE COURT: What number is this
22 again.

23 MR. PEARL: 190.

24 THE COURT: 190.

25 MR. PEARL: Judge, we reviewed

1 DIRECT/Gabriele

2 these twice now, and they were put into
3 evidence.

4 That is our information that came
5 off the exhibits in evidence, Teisha Lamont.
6 It is People's 37.

7 Do you want me to pull off the
8 exhibits and attach them?

9 THE COURT: They are already in.

10 I heard your objection twice, Mr.
11 Keahon. And the telephone is also your
12 exception. All you have to do is to preserve
13 your rights for the record.

14 MR. KEAHON: I object to every
15 exhibit that follows, that contains
16 information that was not recited by the
17 witness, as foundation for these charts.

18 THE COURT: Thank you.

19 (The following occurred in open
20 court):

21 (Pause)

22 MR. PEARL: Judge, I'm publishing
23 People's 193. In evidence.

24 BY MR. PEARL:

25 Q. Detective, tell the jury specifically what

1 DIRECT/Gabriele
2 is People's 193?

3 A. Analysis of Briton Lawler's M & T Bank
4 case in the amount of \$59,000 on 9/28/04.

5 On this particular case, Britton Lawler's
6 M & T Bank case, we have a phone number
7 (212)561-1799, appearing on the application, it is an
8 AeroBeep telephone number.

9 This particular phone number, the
10 (347)623-1549 number, that is the Sprint number in
11 the name of Wojcieh Wachnik, calls into that
12 particular number on two separate occasions.

13 Then we have the T-Mobile number
14 (917)213-9228 number. That particular phone is
15 calling into the number listed on the Briton Lawler
16 M & T Bank case, on two separate occasion.

17 Then we have the fifteen calls between the
18 defendant's cell phone --

19 Q. The phone with the subscriber in the name
20 of Lamar Whitehead.

21 A. Yes, correct.

22 And the T-Mobile phone.

23 Q. And that No. 15, that is for the same time
24 period on all the charts between the T-Mobile?

25 A. Between the T-Mobile records, correct.

1 DIRECT/Gabriele

2 Q. Detective, just for the record, you have
3 had an opportunity to review People's Exhibit 66, the
4 AeroBeep records?

5 A. Yes, I have.

6 Q. Showing you what's been placed in evidence
7 as People's 194. Do you recognize People's 194?

8 A. Yes, I do.

9 Q. What if anything is People's 194
10 specifically?

11 A. Brian Foley Chase bank case, in the amount
12 of \$58,000, occurring 10/4/04. On this particular
13 application, there were two phone numbers,
14 (516)394-0555, and (914)730-9240.

15 Both numbers are AeroBeep numbers.

16 Q. And did you prepare a spray analysis
17 concerning the phone records with the subscriber of
18 Lamar Whitehead and the T-Mobile records in
19 conjunction with those phone numbers?

20 A. Yes, I did.

21 Q. Can you tell the jury what your chart
22 displays?

23 A. The phone number (718)772-6498 and the
24 subscriber name of Lamar Whitehead, calls into this
25 particular AeroBeep number on one occasion. The

1 DIRECT/Gabriele

2 T-Mobile cell phone (917)213-9228, calls into the
3 same AeroBeep number on four separate occasions, as
4 well as calling into that particular AeroBeep number,
5 on seven separate occasions.

6 In addition, there is the link between the
7 (718)772-6498 cell phone, subscriber of Lamar
8 Whitehead, calling back and forth to the T-Mobile
9 phone on fifteen separate occasions.

10 Q. Detective, you indicated on the Brian
11 Foley Chase bank, there is a date of 10/4/04. Where
12 if anywhere is that date coming from?

13 A. The bank records.

14 Q. Is that the date the application was made?

15 A. Correct.

16 Q. Showing you what is in evidence as
17 People's 195. Tell the jurors specifically what is
18 People's 195?

19 A. It is a chart, Brian Foley, M & T Bank.
20 \$58,000. And listed on the particular application,
21 the telephone number (516)394-0555.

22 Q. That is an AeroBeep phone number?

23 A. That is correct.

24 Q. I'd like to show you what is in evidence
25 as People's 196. The same question, can you tell the

1 DIRECT/Gabriele

2 jury specifically what is People's 196?

3 A. It is a chart of the Brian Smith M & T
4 Bank case, in the amount of \$56,000. On that
5 particular -- on that particular application, this
6 case phone number, which is an AeroBeep phone number,
7 (212)726-0513. That particular number, the T-Mobile
8 phone calls in, nine separate times. That particular
9 phone, (718)772-6498 number, calls in fifteen times.
10 And then with the linkage, the fifteen numbers called
11 between the T-Mobile phone and the (718)772-6498
12 number.

13 Q. The line between the T-Mobile phone and
14 the phone with the subscriber of Lamar Whitehead,
15 what does it mean when the arrow is double arrowed?

16 A. There are phone calls back and forth.

17 Q. Totaling fifteen?

18 A. Correct.

19 Q. People's 197. Can you tell the jury what
20 if anything specifically is People's 197?

21 A. Michael Nolan M & T Bank case. The
22 particular phone number (516)512-5016 appears on the
23 Michael Nolan M & T Bank case. And that particular
24 AeroBeep number is called by the Sprint phone in the
25 name of Wojcieh Wachnik, thirty-five separate times.

1 DIRECT/Gabriele

2 It is called by the T-Mobile cell phone, eleven
3 separate times, and it is also called by the
4 (718)772-6498 numbers and the subscriber is Lamar
5 Whitehead, on one occasion.

6 Q. Showing you what is in evidence as
7 People's 198. Can you tell the jury specifically
8 what is People's 198?

9 A. It's Michael Nolan Chase bank case, in the
10 amount of \$59,000. On the application was a phone
11 number (718)512-5016, it is an AeroBeep phone number,
12 that particular AeroBeep phone number was called by
13 the Wojcieh Wachnik Sprint phone on thirty-five
14 separate occasions. By the T-Mobile phone on eleven
15 separate occasions. And by the cell phone of the
16 subscriber of Lamar Whitehead on one occasion. Then
17 we have the link, again, between the cell phone in
18 the subscriber name of Lamar Whitehead and the
19 T-Mobile phone.

20 Q. I'd like to show you what is in evidence
21 as People's 199. What if anything is specifically in
22 reference to People's 199?

23 A. 199 is the Raymond Sperl E-Loan auto loan
24 application in the amount of \$73,000.

25 Q. What is 10/18/04 without the line?

1 DIRECT/Gabriele

2 A. 10/18 on this particular E-Loan
3 application, in the name of Raymond Sperl, there is
4 an AeroBeep telephone number (212)591-0575, that
5 particular AeroBeep phone number is called on five
6 separate occasions by the T-Mobile phone. Then
7 again, the link between the cell phone subscriber of
8 Lamar Whitehead and the T-Mobile phone.

9 Q. Showing you what is in evidence as
10 People's 205. What if anything is People's 205?

11 A. Eric Besso, Chase bank case in the amount
12 of \$59,000. On this particular Chase bank records,
13 there is a T-Mobile phone, appearing on the records.
14 As well as an AeroBeep phone of (516)394-0848. In
15 this particular case, cell phone, the subscriber of
16 Lamar Whitehead, calls into the AeroBeep number on
17 three separate occasions, and then again we have the
18 link between the T-Mobile phone and the 772-6498
19 phone, with fifteen phone calls.

20 Q. Showing you what is in evidence as
21 People's 206. What if anything is People's 206?

22 A. The Brenda Foley Chase bank case. On this
23 particular case, on the bank records there, is listed
24 a telephone number (914)730-9240. Again, it is an
25 AeroBeep phone number. This particular AeroBeep

1 DIRECT/Gabriele

2 phone number was called by the T-Mobile phone on four
3 separate occasions. It was called by the phone
4 (718)772-6498, subscriber name of Lamar Whitehead, on
5 one separate occasion.

6 Once again we have the link between the
7 T-Mobile phone (718)772-6498 number.

8 Q. There is a last box on this chart?

9 A. This particular Brenda Foley case, the
10 name Brenda Foley was used, but the Social Security
11 number of Eric Besso was listed on the application.

12 Q. Detective, I'm showing you what is in
13 evidence for demonstrative purposes as People's 207.
14 Specifically what is People's 207?

15 A. People's 207 is the Kathleen March Chase
16 case. This particular case, this particular
17 application, there are two phone numbers that appear
18 (516)394-0848 (212)726-0513. Both of which are
19 AeroBeep numbers.

20 The number ending in 0848, called on three
21 separate occasions by the next telephone of
22 (718)772-6498, subscriber of Lamar Whitehead, as well
23 as that same phone number, (718)772-6498, calls into
24 the second number that is listed on the Chase Bank
25 records, on nine separate occasions.

1 DIRECT/Gabriele

2 The T-Mobile phone, (917)213-9228, calls
3 into that AeroBeep number on fifteen separate
4 occasions, and then we have the link between the cell
5 phone, the subscriber of Lamar Whitehead, and the
6 T-Mobile phone with fifteen phone calls.

7 Q. The date of the Kathleen March case, was
8 what date?

9 A. October 13th, 2004.

10 Q. The application was in the amount of
11 \$50,000?

12 A. That is correct.

13 Q. I'm showing you what is in evidence for
14 demonstrative purposes as 208. What if anything is
15 208?

16 A. Thomas Palladino Chase case, amount,
17 \$46,500. On this particular application, there is
18 an AeroBeep telephone number, (516)394-0848, that
19 particular number is called on three separate
20 occasions, from the cell phone (718)772-6498, the
21 subscriber of Lamar Whitehead.

22 Q. I'd like to show you the final chart,
23 People's 209, that is in evidence for demonstrative
24 purposes. Specifically, what is 209?

25 A. 209, is the Michael Ciccaro Chase case in

1 DIRECT/Gabriele
2 the amount of \$46,000. On this particular
3 application, there is the phone number (914)730-9303.
4 An AeroBeep telephone number, and on this particular
5 case, T-Mobile phone called into that particular
6 AeroBeep number on four separate occasions. Again,
7 we have the link between the T-Mobile phone and the
8 phone with the subscriber of Lamar Whitehead.

9 MR. PEARL: Thank you, detective.

10 THE COURT: Thank you, detective.

11 You may resume your seat.

12 (The Witness returns to the witness
13 stand)

14 MR. PEARL: Detective, I have no
15 further questions. Thank you very much, your
16 Honor.

17 THE COURT: Thank you. In light of
18 the time, detective, you'll be asked to stand
19 down and you'll resume your seat at 2:00
20 o'clock this afternoon. I direct you not to
21 discuss your testimony with anybody as you're
22 in the middle of your examination.

23 At that point in time, Mr. Keahon,
24 you may begin your inquiry of the witness.

25 MR. KEAHON: That's great, thank

1 People v. Lamar Whitehead

2 you.

3 THE COURT: The jury will be
4 excused for lunch.

5 I remind you not to form or express
6 an opinion about the case until submitted to
7 you for deliberations. As I've told you, do
8 not discuss this case or any matter connected
9 to the trial amongst yourselves or with anyone
10 else. Nor may you allow it to be discussed in
11 your presence.

12 Don't read or listen to accounts
13 reported in the news media, don't visit or
14 view the place or places where the offense
15 charged was allegedly committed or any other
16 place involved in this case, and promptly
17 report to the court by way of coming to me
18 personally, through a court officer, any
19 incident within your knowledge involving any
20 attempt to influence any member of the jury.

21 You may not request, accept, agree
22 to accept or discuss with anyone, the
23 receiving or accepting of any payment or
24 benefit for supplying information about the
25 case. Promptly report to the court any

1 People v. Lamar Whitehead

2 attempt by anyone to discuss any aspect of the
3 case with you, or to improperly influence you.

4 Thank you very much again enjoy
5 your lunch see you at 2:00 o'clock.

6 (The Jury is excused)

7 THE COURT: Is there anything to
8 place on the record before the court recesses
9 for lunch?

10 MR. KEAHON: No, your Honor.

11 THE COURT: Thank you, very much,
12 again. Mr. Whitehead, I'll see you at 2:00
13 o'clock. Counsel, thank you again.

14 -o0o-

15

16

17

18 A F T E R N O O N S E S S I O N

19 2:00 p.m.

20 24 March 2008

21 THE CLERK: This is the case on
22 trial, People versus Lamar Whitehead. All
23 parties present outside the presence of the
24 jury.

25 THE COURT: Thank you.

1 People v. Lamar Whitehead

2 As the jury was being brought in
3 from lunch, one of the jurors said we have a
4 flight on Friday. We don't want anyone
5 feeling pressure as far as the case goes.

6 MR. PEARL: Is it possible to do it
7 at the end of the day.

8 THE COURT: If we have a juror who
9 has a flight on Friday, I'm anticipating
10 ending testimony today, closings tomorrow. If
11 we get to the charge -- to the court's
12 instruction, the charge might be Thursday
13 morning. If we have a juror then who is
14 thinking of a flight on Friday, then that can
15 create a problem so. You might want to
16 consider a substitution at this point in time
17 rather than hold the person past that.

18 MR. PEARL: You might be right
19 about that. I thought we could start the
20 cross of Det. Gabriele.

21 THE COURT: We have three
22 alternates left. We can discuss it at a later
23 time.

24 Do you want to start the testimony,
25 Mr. Keahon?

1 People v. Lamar Whitehead

2 MR. KEAHON: Yes.

3 Do we know who the juror is?

4 THE COURT: Juror No. 5

5 Is there anything before we bring
6 the jury out and continue with Det. Gabriele?

7 MR. KEAHON: No.

8 Is there any way that the fellas
9 could do it over there, and I could get going
10 on my cross?

11 THE COURT: Are you going to need
12 them during the cross?

13 MR. KEAHON: Yes, but I can get
14 going on my cross. We have them all pulled.
15 They were kind enough to do it earlier.

16 THE COURT OFFICER: We can do it
17 out here.

18 THE COURT: Thank you very much,
19 officers.

20 MR. PEARL: Judge, can we approach
21 off the record.

22 (Side bar discussion held off the
23 record)

24 THE COURT: If the jury is ready,
25 we'll proceed.

1 People v. Lamar Whitehead

2 THE COURT OFFICER: Jury entering.

3 THE COURT: All rise, please.

4 (The following occurred with the
5 jury present):

6 THE COURT: Please be seated.

7 THE CLERK: Case on trial, People
8 versus Whitehead. Counsel and all parties are
9 present. Counsel waive the roll.

10 THE COURT: Thank you all, once
11 again.

12 Recall Det. Gabriele to the stand,
13 please.

14 Good afternoon, detective, you may
15 resume your seat.

16 (The Witness resumes the stand)

17 THE CLERK: Detective, I remind
18 you, you're testifying under oath.

19 THE COURT: Please.

20 Thank you, Mr. Keahon. You may
21 inquire.

22 MR. KEAHON: Thank you, judge.

23 CROSS-EXAMINATION

24 BY MR. KEAHON:

25 Q. Good afternoon, detective?

1 CROSS/Gabriele

2 A. Good afternoon, Mr. Keahon.

3 Q. Detective, you have been with the Suffolk
4 County Police Department for how long?

5 A. Approximately 16 years.

6 Q. You have been a detective for how many
7 years?

8 A. Approximately six years.

9 Q. And what other assignments did you have in
10 the Suffolk County Police Department before becoming
11 a member of the Identity Theft Unit?

12 A. I was a patrol officer and I was also in
13 plainclothes.

14 Q. When you say "plainclothes", did you do
15 narcotics?

16 A. Limited narcotics, yes. If we found
17 something on a car stop. Not actual narcotics
18 investigations.

19 Q. Detective, let's talk about Baron Honda.
20 You're familiar with that place?

21 A. Yes, I am.

22 Q. And you paid visits there, have you?

23 A. Yes, I have.

24 Q. And when for the first time did you go to
25 Baron Honda?

1 CROSS/Gabriele

2 A. I would have to look at my notes. I don't
3 remember exactly offhand.

4 Q. Approximately?

5 A. The first time I went -- sometime maybe
6 2006? 2007? I'm not -- I'm not exactly sure.

7 Q. You're familiar with the name Gilda
8 Tricararo?

9 A. Gilda Tricararo, yes.

10 Q. When is the first time you spoke with her?

11 A. I have to look at my note.

12 Q. She was a witness at this case?

13 A. Yes.

14 Q. Did you take a statement from her?

15 A. No, I did not.

16 Q. Did you make any notes, do any interviews
17 of her?

18 A. If I can refer to my notes, if there is
19 anything in there? I'm not sure if there is, or not.

20 Q. Uh-hum.

21 A. No, I didn't have any notes from speaking
22 with Mrs. Tricararo.

23 Q. You know she testified at this trial?

24 A. Correct, yes.

25 Q. Have you read her transcript of both

1 CROSS/Gabriele

2 direct and cross-examination at this trial?

3 A. No, I have not.

4 Q. In your conversations with her, did you
5 ask her whether or not Valerie Rodriguez had access
6 to any Dealer Track Program?

7 A. No, I did not.

8 Q. Do you know the questions she was asked
9 about that during this trial?

10 A. No, I do not, counsel.

11 Q. Do you know the answers she gave on
12 cross-examination?

13 A. No, I do not.

14 Q. Brian Smith, he's a victim in this case?

15 A. Yes, he is.

16 Q. He was an employee of Baron Honda?

17 A. Yes, he was.

18 Q. When was the first time you spoke with
19 him, sir?

20 A. The day I took an affidavit from him.

21 Q. Did you question him at all as to whether
22 or not he knew Valerie Rodriguez while she was an
23 employee at Baron Honda?

24 A. No, I did not.

25 Q. Up until today's date, did you know

1 CROSS/Gabriele

2 whether or not they were friends?

3 A. No, I do not.

4 Q. Up until today's date, do you know whether
5 or not Brian Smith was an employee of Baron Honda
6 during the same time period as Valerie Rodriguez?

7 A. Yes, he was.

8 Q. Did you have any conversations with
9 Valerie Rodriguez when you interviewed her, as to her
10 friendship with Brian Smith?

11 A. No, I did not.

12 Q. Up until today's date.

13 A. I haven't had any conversations with
14 reference to Brian Smith and Valerie Rodriguez, no.

15 Q. Do you know the name of Valerie Rodriguez'
16 boss?

17 A. Yes.

18 Q. What was it?

19 A. Gentleman by the name of Eddie Regis, was
20 a direct supervisor, and Nicolas La Moen (ph) was the
21 overall supervisor of the B Team finance.

22 Q. Did Gilda Tricarò ever tell you that
23 Valerie Rodriguez did not have access to the Dealer
24 Track Program?

25 A. No.

1 CROSS/Gabriele

2 Q. Were you present at all when she was
3 interviewed by the district attorney's office prior
4 to her testimony at this trial?

5 A. Yes, I was.

6 Q. Do you recall any questions being asked of
7 Ms. Tricaró, as to whether or not --

8 A. Excuse me, counsel. Are you speaking of
9 Ms. Tricaró or Ms. Rodriguez.

10 Q. Ms. Tricaró?

11 A. No, I was not present at Ms. Tricaró's
12 interview with the district attorney's office.

13 Q. Well, you've prepared this case with Mr.
14 Pearl, have you not?

15 A. That is correct.

16 Q. Has anyone made you aware that Ms. Tricaró
17 says that Valerie Rodriguez did not have access to
18 the Dealer Track Program?

19 MR. PEARL: Objection.

20 THE COURT: Sustained.

21 Q. When you interviewed Ms. Rodriguez, did
22 she tell you that an individual's credit report only
23 stayed on the Dealer Track Program for 30 days?

24 A. No, she did not.

25 Q. Do you know she testified in this

1 CROSS/Gabriele

2 courtroom about that?

3 A. No, I do not, counsel.

4 Q. Did you even ask her, when you interviewed
5 her, how long a period of time someone's credit
6 report would stay on that Dealer Track Program?

7 A. I don't believe I did, no.

8 Q. You were present when she was prepared by
9 the assistant district attorney prior to her
10 testimony?

11 A. Are you referring to when I took a
12 statement from her, or prior to her testifying in
13 trial.

14 Q. Prior to her testifying in trial?

15 A. No, I was not.

16 Q. When you spoke to Ms. Rodriguez, did you
17 speak to her about when she first got a password for
18 the Dealer Track Program?

19 A. I would have to refer to the statement
20 that I took from her?

21 Q. Sure.

22 THE WITNESS: Can you ask me the
23 question again? I completely lost what you
24 asked me?

25 Q. When you spoke to Ms. Rodriguez, did you

1 CROSS/Gabriele

2 ask her how long an individual's credit report was
3 kept on the Dealer Track Program?

4 A. No, I did not.

5 Q. Did you ask her when is the first time she
6 claimed to have gotten the password for the Dealer
7 Track Program?

8 A. I don't believe I did, no.

9 Q. Have you read her cross-examination as to
10 that specific point, that is, when she claimed she
11 first got the Dealer Track Program password?

12 A. No, sir, I have not.

13 Q. Has anyone indicated to you that she
14 indicated that she got that password in November or
15 December of 2004?

16 A. No, sir, they have not.

17 Q. I think you told us her immediate boss was
18 Eddie J. Regis?

19 A. That is correct.

20 Q. Initials "EJRegis"?

21 A. That is correct.

22 Q. Did you take that statement from him?

23 A. No, I did not.

24 Q. Do you have any notes of any interview of
25 him?

1 CROSS/Gabriele

2 A. No, I do not.

3 Q. Did you ask him specifically who had the
4 password for the Dealer Track Program?

5 A. No, I did not.

6 Q. Maria Macarle, did she buy a vehicle from
7 Baron Honda?

8 A. Yes, she did.

9 Q. Do you know when she filled out that
10 credit report?

11 A. She filled out a credit report or
12 application.

13 Q. Application for a credit report?

14 A. I have to look at the file. I don't know
15 the exact date, no, sir.

16 Q. Would August of 2004 refresh your
17 recollection?

18 A. I have to look at the document. I can't
19 off the top of my head.

20 Q. 30 days after August of 2004, would be
21 September of 2004, right?

22 A. That is correct, yes.

23 Q. If Ms. Rodriguez claims that she didn't
24 get the password until November or December of 2004,
25 then that credit report would have been gone, right?

1 CROSS/Gabriele

2 A. There is a file in Baron Honda. They keep
3 actual physical files, yes.

4 Q. Well, Ms. Rodriguez never told you that
5 she went through a series of files, did she?

6 A. No, she didn't. No.

7 Q. Now Brian Smith, do you know when he
8 filled out his credit report?

9 A. Again, I'd have to look at the application
10 from Baron Honda. I do not know off the top of my
11 head, no.

12 Q. Would August 27 of 2004 refresh your
13 recollection?

14 A. Counsel, I have to look at the documents.
15 I don't know off the top of my head.

16 Q. Thirty days after that would be in
17 September, right?

18 A. Yes, it would.

19 Q. What about Mike Nolan, do you know when he
20 filled out a credit report?

21 A. No, I do not.

22 Q. August 27, 2004, does that refresh your
23 recollection?

24 A. Again, I have to look at the Baron Honda
25 documents. I don't have that information at the tip

1 CROSS/Gabriele
2 of my tongue, no.

3 Q. What about Joseph Sweeney, do you know
4 when he filled out the application for the credit
5 report?

6 A. The application for credit.

7 Q. Yeah?

8 A. Through Honda? No, I'd have to look at
9 the document.

10 Q. Would August 26th, 2004, refresh your
11 recollection?

12 A. No, it wouldn't. Unless I can see the
13 document.

14 Q. What about Eric Besso.

15 A. It's the same. I have to look at the
16 document.

17 Q. Does the date of August 26th, 2004,
18 refresh your recollection?

19 A. Again, counsel, I'd have to look at the
20 document.

21 Q. Kathleen March, do you know when she
22 filled out a credit report?

23 A. Again, I'd have to look at the Baron Honda
24 exhibit.

25 Q. September 5th of 2004, does that refresh

1 CROSS/Gabriele

2 your recollection?

3 A. Again, counselor, I'd have to look at the
4 document.

5 Q. Briton Lawler, you're familiar with that
6 name?

7 A. Yes, I am.

8 Q. Do you know when he filled out the credit
9 report?

10 A. Again, I'd have to look at the Baron Honda
11 exhibit.

12 Q. Does August 30th of 2004 refresh your
13 recollection?

14 A. No, it doesn't.

15 Q. What about Brian and Brenda Foley. You
16 gave some testimony today about them?

17 A. I gave testimony as far as their.

18 Q. Chart?

19 A. Spray charts?

20 Q. Yes?

21 A. Yes, I did.

22 Q. When might they have filled out that
23 credit report?

24 A. Again, I'd have to look at the Baron Honda
25 exhibit.

1 CROSS/Gabriele

2 Q. Would September 5th of 2004 refresh your
3 recollection?

4 A. I'm sure if you're telling me that, I
5 would take it as gospel, Mr. Keahon.

6 Q. Can they --

7 MR. KEAHON: Thank you for that
8 answer, sir.

9 Q. What about Gloria Conaty.

10 A. Again, I'd have to look at the exhibit.

11 Q. September 19th of 2004, does that refresh
12 your recollection?

13 A. Again, I have to look at the exhibit.

14 Q. Gerard (sic) Thurman. He was a victim in
15 this case, was he not?

16 A. That is correct.

17 Q. His credit report was filled out when, do
18 you know?

19 A. The application for credit through Honda?
20 Again, I'd have to look at the exhibit.

21 Q. September 11th, 2004, does that refresh
22 your recollection?

23 A. I'd have to look at the exhibit.

24 Q. Thomas Palladino. Do you know when he
25 filled out a credit report?

1 CROSS/Gabriele

2 A. No. I do not.

3 Q. October 13th, 2004. Does that refresh
4 your recollection?

5 A. I'd have to once again look at the Baron
6 Honda exhibits.

7 Q. Wojcieh Wachnik. Did he buy a car from
8 Baron Honda?

9 A. I believe he did, yes.

10 Q. Do you know when he did the credit report?

11 A. No, I do not.

12 Q. Nor do I. Raymond and Nerina Sperl, do
13 you know when they did the credit report?

14 A. When they did the credit application.

15 Q. Yes?

16 A. No, I do not.

17 Q. Does 10/16/04 refresh your recollection?

18 A. I would again have to look at the Baron
19 Honda exhibit.

20 Q. You talked to us about the Wojcieh Wachnik
21 Sprint-Nextel phone, cellular phone?

22 A. Correct.

23 Q. Do you recall a Dan Jensen, from
24 Sprint-Nextel, testifying?

25 A. I know that there was a Sprint

1 CROSS/Gabriele

2 representative testifying, yes.

3 Q. Are you aware that the amount paid for Mr.
4 Wachnik's Sprint-Nextel cellular phone bill, the
5 record was not produced of how, when, or the method
6 of payment?

7 A. Are you asking me if I know what Dan
8 Jensen said?

9 Q. Yeah?

10 A. As far as that?

11 Q. Yes?

12 A. No, I have not idea what Dan Jensen said.

13 Q. Did you ever see a document how Mr.
14 Wachnik's Sprint-Nextel bill was paid?

15 A. No.

16 Q. Or when it was paid?

17 A. No.

18 Q. Or the method of it being paid?

19 A. No.

20 Q. You spoke with Ms. Rodriguez for the first
21 time when, sir?

22 A. I believe it was 1/27/06. 1/27/07 was the
23 first time I spoke with her.

24 Q. And that was by phone?

25 A. Yes, it was.

1 CROSS/Gabriele

2 Q. You called her?

3 A. Yes.

4 Q. When you spoke with her, did you tell her
5 you'd like to meet with her?

6 A. Yes, I did.

7 Q. And that was on February 6th, 2007, wasn't
8 it?

9 A. The meeting with her was on February 6th
10 of 2007.

11 Q. No, the phone call I'm asking you?

12 A. No, if I can refresh my memory from my
13 notes.

14 Q. Sure.

15 A. 1/26/07, was when I spoke with her the
16 first time.

17 Q. When you spoke with her, she was a person
18 of interest for you?

19 A. Yes, she was.

20 Q. You knew she worked for Baron Honda.

21 A. Yes, I did.

22 Q. You knew that she was part of the B
23 Finance Team?

24 A. B Team Finance.

25 Q. She dealt with used vehicles?

1 CROSS/Gabriele

2 A. Yes.

3 Q. And when you spoke to her for the first
4 time on that phone, on the date you've just told us,
5 you told her that there was some problems with loans,
6 am I correct?

7 A. That's correct, yes.

8 Q. That had been taken out and that many of
9 the individuals involved have been at Baron Honda?

10 A. Had purchased vehicles at Baron Honda,
11 yes.

12 Q. You told her that you found issues with
13 phone records between her and Mr. Lamar Whitehead?

14 A. That's correct.

15 Q. And you wanted to discuss the situation
16 with her, right?

17 A. Yes.

18 Q. You also told her, that you believe
19 through your investigation, that she had been in
20 possession of credit reports which were the subject
21 of the fraud?

22 A. Could you repeat that question again,
23 counsel?

24 Q. Sure? You've given testimony before,
25 where I've asked you questions in this case, right?

1 CROSS/Gabriele

2 A. That is correct, yes.

3 Q. You've reviewed that testimony, have you?

4 A. Yes, I have.

5 Q. You were provided with a transcript of
6 that?

7 A. Yes.

8 Q. You told her, did you not, sir, that you
9 believed through your investigation that she had been
10 in possession of credit reports which were the
11 subject of a fraud.

12 A. I would have to look at those minutes to a
13 specific thing, what you're describing, there.

14 MR. KEAHON: Okay.

15 THE WITNESS: If I could.

16 Q. I'm calling your attention to page 156 and
17 157 of the transcript, and your answer was, "Yes, I
18 told her there was some problems with loans that had
19 been taken out and that many of the individuals
20 involved had been at Baron Honda and that we had
21 found some issues with phone records between her and
22 Mr. Lamar Whitehead and we wanted to discuss the
23 situation with her."

24 A. Correct.

25 Q. Okay. And that is what I had asked you?

1 CROSS/Gabriele

2 A. You asked me if I had asked her if there
3 was actual credit reports involved.

4 Q. And what did she say when you said that to
5 her?

6 A. When I said what to her, that we believed?

7 Q. Just what I read back?

8 A. There was something involved with her and
9 Mr. Whitehead.

10 Q. Yeah?

11 A. We discussed -- and I told her I wanted to
12 meet with her.

13 Q. Well, didn't you also tell her that you
14 believed, through your investigation, that she had
15 been in possession of information on credit reports
16 which were the subject of the fraud?

17 A. Again, I have to look at the context of
18 the testimony.

19 MR. KEAHON: I'll read it to you
20 again.

21 MR. PEARL: I object. If he wants
22 to refresh his recollection, to the detective,
23 do it properly.

24 THE COURT: If you could note the
25 line for your colleague.

1 CROSS/Gabriele

2 Q. The last line on Page 156, down to Line
3 10, on Page 157:

4 "Answer: Yes, I told her there was
5 some problems with loans that had been taken
6 out and that many of the individuals involved
7 had been at Baron Honda and we had found some
8 issues with phone records between her and Mr.
9 Lamar Whitehead and we wanted to discuss the
10 situation with her.

11 "Question: Did you also tell her
12 that you believed through your investigation
13 that she had been in possession of information
14 on credit reports which were the subject of
15 the fraud?

16 "Answer: We asked her, yes."

17 A. Yes, that is correct.

18 Q. Did she tell you, "Yes, she had been in
19 possession of those credit reports"?

20 A. Had she been in possession of those credit
21 reports.

22 Q. Yeah?

23 A. I don't recall whether she did or not, no.

24 Q. Page 157, Line 13:

25 "Question: Did she tell you, yes, she

1 CROSS/Gabriele

2 had?

3 "Answer: No, she did not."

4 Is that correct?

5 A. That's correct, yes.

6 Q. Did she ever deny ever having knowledge of
7 any credit reports?

8 A. At which time, in the initial conference?

9 Q. Yes, yes?

10 A. No.

11 Q. Well, did she ever indicate to you, yes,
12 she did have those credit reports?

13 A. No, she did not.

14 Q. She told you she didn't want to speak to
15 you anymore, didn't she?

16 A. She admitted to me that she would like to
17 meet with me, and then after that, we stopped the
18 conversation and she did not seem to want to go any
19 further from that point on.

20 Q. Well, after you made those comments to
21 her, she didn't speak to you anymore, did she?

22 A. That's correct.

23 Q. Then you were supposed to meet her that
24 afternoon?

25 A. Not that afternoon but a day later, I

1 CROSS/Gabriele

2 believe.

3 Q. Well, weren't you supposed to meet her
4 later that day?

5 A. No, not later that day.

6 Q. Page 157:

7 "Question: She told you she wanted to
8 get a lawyer?

9 "Answer: She didn't tell me she wanted
10 to get a lawyer that day. I found out later that
11 day, when I was supposed to meet her, she had
12 retained a lawyer."

13 A. I believe I corrected myself after that,
14 counsel.

15 MR. KEAHON: Can I approach,
16 please?

17 THE COURT: Yes.

18 (The following occurred at side
19 bar):

20 THE COURT: You wish to approach
21 the witness, Mr. Keahon?

22 You have the court's leave.

23 (The following occurred in open
24 court):

25 BY MR. KEAHON:

1 CROSS/Gabriele

2 Q. Page 157, detective, the bottom of the
3 page, three-quarters of the way down the page?

4 A. Yes.

5 Q. I think you said you corrected yourself?

6 A. Yes, I did not meet -- I did not find out
7 that she had retained a lawyer that day. No, I did
8 not.

9 Q. No?

10 A. No.

11 Q. The question was, weren't you supposed to
12 meet her that day? And you said no?

13 A. No, I was not supposed to meet her that
14 day.

15 Q. What does the transcript say?

16 A. The transcript said I was going to meet
17 her that day.

18 Q. So let's clear it up.

19 My question to you was, were you supposed
20 to meet her that day? You said "no"?

21 A. That is correct.

22 Q. Your transcript says "yes"?

23 A. If you look at my direct, the direct
24 examination is very clear that I said a couple of
25 days later, yes.

1 CROSS/Gabriele

2 Q. I'm asking you about the
3 cross-examination?

4 MR. PEARL: Objection.

5 THE COURT: Sustained.

6 Mr. Keahon, if you would be so kind
7 as to use the specific reference to the page
8 and line.

9 MR. KEAHON: Okay.

10 Q. Is there any confusion when you looked at
11 this transcript?

12 A. No, there was not.

13 Q. Clearly, I asked you on cross-examination,
14 on Page 157, whether or not you were supposed to meet
15 her that day, and you said no, correct? Later that
16 day?

17 A. Correct.

18 Q. When I showed you that transcript, you saw
19 that you testified -- Page 157, Line 18:

20 "Question: She told you she wanted to get
21 a lawyer?

22 "Answer: She didn't tell me she wanted
23 to get a lawyer that day. I found out later that day
24 when I was supposed to meet her"?

25 A. Correct.

1 CROSS/Gabriele

2 Q. That she had retained a lawyer?

3 A. That is correct.

4 Q. So you were supposed to meet her later
5 that day?

6 A. No, I wasn't.

7 Q. Was this testimony wrong?

8 MR. PEARL: Judge, objection.

9 THE COURT: Sustained. Form.

10 Rephrase.

11 Q. "I found out later that day when I was
12 supposed to meet her"?

13 A. If you back up, I did not meet her that
14 day.

15 If you back up a few lines, there,
16 counselor.

17 Q. Obviously, you didn't meet her that date
18 because she got a lawyer, right?

19 A. I didn't meet her that date because we
20 were scheduled to meet sometime after that day.

21 Q. You said, back up a few lines. Would you
22 take a look at Page 157?

23 A. She didn't tell me she wanted to get a
24 lawyer that day, I answered.

25 Q. Go ahead?

1 CROSS/Gabriele

2 A. Then I said I found out later that day,
3 when I was supposed to meet her, that she had
4 retained a lawyer.

5 Q. So you're saying, in that record, that you
6 were supposed to meet her later that day?

7 A. That's what it says but that was not the
8 case, no.

9 Q. It took us a long time to get there.
10 Okay, thank you.

11 So notwithstanding what the transcript
12 says, you weren't supposed to meet her that day?

13 A. No, I was not supposed to meet her that
14 day.

15 Q. But later that day you did find out that
16 she had retained an attorney?

17 A. No, the next day I found out or a day
18 after that. Not that same day. That same day I did
19 not find out that she had retained an attorney.

20 Q. When you found out she had an attorney,
21 how did you find that out?

22 A. When I came back to work, I attempted to
23 contact her, and she told me she had retained an
24 attorney.

25 Q. Did she give you the attorney's name?

1 CROSS/Gabriele

2 A. Yeah, a Mr. Earl Roberts.

3 Q. You gave that name to the district
4 attorney's office?

5 A. Yes, I did.

6 Q. They reached out to Mr. Earl Roberts and
7 asked him to come in?

8 A. Correct.

9 Q. They asked him to come in with her?

10 A. Yes.

11 Q. The four of you met?

12 A. Yes.

13 Q. The first thing that you did, when you met
14 with her and her attorney, and Mr. Pearl, was have
15 her sign a proffer agreement?

16 A. No.

17 Q. Did she sign a proffer agreement?

18 A. Yes, she did.

19 Q. Did she sign it that day?

20 A. Yes, she did.

21 MR. KEAHON: I don't know what
22 number that is, defense either C or D.

23 THE COURT OFFICER: Defendant's

24 Exhibit C.

25 MR. KEAHON: Thank you very much.

1 CROSS/Gabriele

2 Q. Defendant's Exhibit C?

3 THE COURT: Officer, if we could
4 have the lights turned off for a minute,
5 please.

6 Q. This is the proffer agreement of February
7 6th?

8 A. That's correct.

9 Q. And the first paragraph says "any
10 prosecution against Valerie Rodriguez"?

11 A. Yes. Did you want me to read that
12 counselor?

13 "In any prosecution against Valerie
14 Rodriguez by the Suffolk County District Attorney's
15 office, the Suffolk County District Attorney's office
16 will not offer in evidence in its case in chief or at
17 sentencing any statements made by Valerie Rodriguez
18 at the aforementioned meeting", right?

19 A. Correct.

20 Q. Second paragraph.

21 MR. PEARL: That is not the end of
22 that paragraph, I don't think.

23 Q. "Made by Valerie Rodriguez in the
24 aforementioned meeting except in prosecution for
25 false statements, obstruction of justice or perjury",

1 CROSS/Gabriele

2 correct?

3 A. That is correct.

4 Q. The second paragraph deals with the
5 Suffolk County District Attorney's office -- may use
6 any information derived directly or indirect?

7 A. The Suffolk County District Attorney's
8 office. It doesn't say "I".

9 Q. "The Suffolk County District Attorney's
10 office may use statements made by Valerie Rodriguez
11 at the meeting and all evidence obtained directly or
12 indirectly for the purpose of cross-examination
13 should Valerie Rodriguez testify contrary to her
14 statements", correct?

15 A. That is correct.

16 Q. "It is further understood that this
17 agreement is limited to the oral statements made at
18 the meeting and does not apply to any oral written or
19 recorded statements" by her at any other time, right?

20 A. That is correct.

21 Q. "It is understood that the purpose of this
22 meeting is to determine whether Valerie Rodriguez
23 will be permitted to cooperate with the Suffolk
24 County District Attorney's office." Right?

25 A. Yes, that is correct.

1 CROSS/Gabriele

2 Q. "Five, It is understood that pending a
3 determination whether Valerie Rodriguez will be
4 permitted to cooperate with the Suffolk County
5 District Attorney's office, she has to waive her
6 speedy trial rights", right?

7 A. Yes.

8 Q. Speedy trial rights, right?

9 A. Yes.

10 Q. The second page is "No understandings,
11 promises or agreements have been entered into with
12 respect to this meeting other than those set forth in
13 this agreement and none will be entered into unless
14 in writing and signed by the parties", right?

15 A. Yes.

16 Q. She signed it. Her attorney signed it and
17 Mr. Pearl signed it?

18 A. That is correct.

19 Q. You didn't have any conversations about
20 what she knew or didn't know prior to having her sign
21 that document, did you?

22 A. I didn't even know that document was
23 signed.

24 Q. Were you present when that was discussed?

25 A. The proffer agreement that we just looked

1 CROSS/Gabriele

2 at.

3 Q. Yeah?

4 A. No, I was not.

5 Q. I thought you investigated -- you were
6 present for that meeting?

7 A. I was but not for the proffer agreement.
8 I had no knowledge that that proffer agreement had
9 been signed.

10 Q. Well, the first thing that you did,
11 individually, was you read her her rights?

12 A. That's correct.

13 Q. What rights did you tell her she had?

14 A. Would you like me to read them off the
15 statement.

16 Q. The statement?

17 A. "You have the right to remain silent.

18 "Anything you say can and will be used
19 against you in a Court of Law.

20 "You have the right to talk to a lawyer
21 right now and have him present with you while you're
22 being questioned.

23 "If you cannot afford a lawyer and want
24 one a lawyer will be appointed for you by the court
25 before any questioning. If you decide to answer

1 CROSS/Gabriele

2 questions now, without a lawyer present, you will
3 have the right to stop the questioning at any time
4 until you talk to a lawyer."

5 Q. After you read her her rights, did you
6 tell her that you were interested in any information
7 that she had that referenced Mr. Whitehead concerning
8 identity fraud?

9 A. Yes, I did.

10 Q. Did you ask her details about Mr.
11 Whitehead?

12 A. Yes, I did.

13 Q. Did you then tell her that he was the
14 individual that you were investigating as part of
15 this fraud investigation?

16 A. Yes, I did.

17 Q. That same day she testified in the grand
18 jury, didn't she?

19 A. Yes, she did.

20 Q. So the first time you speak to her, you
21 tell her what you're interested in, she says she
22 doesn't want to talk to you and hangs up, right?

23 A. No, she didn't hang up the phone. She did
24 not want to talk, no. But she did not hang up the
25 phone on me.

1 CROSS/Gabriele

2 Q. After she told you she didn't want to talk
3 to you she hung up the phone?

4 A. She didn't slam the receiver down, Mr.
5 Keahon. She hung up the phone.

6 Q. Then you were supposed to meet her later
7 that afternoon?

8 A. No, not later that afternoon. The next
9 day.

10 Q. And she didn't show up the next day?

11 A. No, I found out she had retained an
12 attorney.

13 Q. When she does come in with her attorney,
14 she signs that proffer agreement?

15 A. That is correct.

16 Q. Which indicates she may be prosecuted,
17 right?

18 A. Not for what she discussed with us on that
19 particular day, no.

20 Q. But you hadn't discussed with her anything
21 at the time this proffer agreement was signed?

22 A. That is correct.

23 Q. So she signs the proffer agreement, right?

24 A. That is correct.

25 Q. Then you read her her rights?

1 CROSS/Gabriele

2 A. Yes.

3 Q. Then you tell her those things you were
4 interested in about him.

5 A. That's correct, yes.

6 Q. Then you put her in the grand jury.

7 MR. PEARL: Objection.

8 THE COURT: Overruled.

9 Q. She goes in the grand jury that day?

10 A. Yes, she does.

11 Q. She gets immunity?

12 A. I don't know what exactly happens in the
13 grand jury? I'm not a district attorney. So,
14 whatever happens in the grand jury, that's what
15 happened that particular day.

16 Q. Did she waive her immunity?

17 A. I wasn't in the grand jury, Mr. Keahon.

18 Q. But you know that, don't you?

19 A. I'm not a lawyer, Mr. Keahon.

20 Q. Are you saying you have to be a lawyer to
21 know working on this case for two years whether or
22 not Valerie Rodriguez got immunity or not?

23 MR. PEARL: Objection.

24 THE COURT: Sustained.

25 Q. Is it your testimony as of today's date,

1 CROSS/Gabriele

2 you don't know that she got immunity in the grand
3 jury?

4 A. I know she got immunity in the grand jury,
5 but I don't know all the mechanisms that work in the
6 grand jury, no.

7 Q. Now we know she got immunity in the grand
8 jury, right?

9 A. Correct.

10 Q. And that's after that grand jury
11 appearance, is after you told her you thought he did
12 it and you wanted information on him, right?

13 MR. PEARL: Objection.

14 Mischaracterization.

15 THE COURT: Sustained, form.

16 Please rephrase, Mr. Keahon.

17 Q. Her grand jury appearance occurred after
18 you told her that you were interested in any
19 information she had against him in fraud, identity
20 theft, yes?

21 A. That is correct, yes.

22 Q. Before she testified in the grand jury,
23 did you ask her if she knew a Kylie Copeland?

24 A. Yes, I did.

25 Q. Before she testified in the grand jury.

1 CROSS/Gabriele

2 A. Yes, I did.

3 Q. Show me one note or report which shows you
4 ever broached that subject with her?

5 MR. PEARL: Object.

6 THE COURT: Sustained.

7 Q. Do you have a note or report that
8 indicates that on that date, when you spoke to her,
9 when she got immunity in the grand jury, you asked
10 her whether or not she ever knew a Kylie Copeland?

11 A. No, I don't.

12 Q. I didn't hear you?

13 A. I said no, I don't.

14 Q. You don't what?

15 A. I don't have any notes indicating that?

16 Q. Do you have any report indicating that?

17 A. No, I do not.

18 Q. Before she got immunity in the grand jury,
19 did you ask Ms. Rodriguez, whether or not she knew a
20 Desmond DeFreitas?

21 A. No, I did not.

22 Q. Before she testified and got immunity in
23 the grand jury, did you ask her whether or not she
24 knew a Desmond DeFreitas?

25 A. No, I did not.

1 CROSS/Gabriele

2 Q. Did you ever get Ms. Rodriguez's phone
3 records for 2004 and 2005?

4 A. I have her phone records. I don't
5 remember the exact dates on the phone records, no.
6 I'd have to look at the phone record.

7 Q. When you say you have her phone records,
8 did you have her phone records, her cell and home
9 phone records subpoenaed?

10 A. Yes, I did.

11 Q. For what months and what years do you have
12 them?

13 A. Mr. Keahon, I'd have to look at the
14 records. Off the top of my head, I do not know what
15 the date range was on those particular phones.

16 Q. Do you have that in your book?

17 A. No, I do not.

18 Q. Where would that be?

19 A. I believe we have it in as an exhibit, two
20 phone numbers, the two phone numbers from her.

21 Q. Do you recall what exhibit that is?

22 A. No, I do not.

23 Q. It is your testimony that the two phones
24 that are exhibits, are the full phone records for
25 Valerie Rodriguez. Cell and home.

1 CROSS/Gabriele

2 A. The full phone records for whatever the
3 time span is that the subpoena requested, yes.

4 Q. Am I correct that when you spoke to to Ms.
5 Rodriguez, you learned she had worked for Baron from
6 September to December of 2004?

7 A. I had known she had worked there prior to
8 speaking with her.

9 Q. From September to December?

10 A. Again, I don't know the exact dates that
11 she worked there, no.

12 Q. Well, did you discuss that with her when
13 you took a statement from her?

14 A. I'd have to refer back to the statement.

15 Q. Please take a look.

16 A. She states that she became serious with
17 Mr. Whitehead about three months after May of 2004.
18 So somewhere around August or September.

19 Q. I think I asked you when she worked for
20 Baron Honda?

21 A. And she indicates that, she says we began
22 getting very serious after about a couple of months.
23 It was at that time I began working as a special
24 finance associate at Baron Honda.

25 Q. Did you ever learn what months she worked

1 CROSS/Gabriele

2 at Baron Honda for all these credit reports?

3 A. I would have to look at the file from
4 Baron Honda, as far as her personnel file.

5 Q. As you sit here now, you don't know it was
6 from September to December?

7 A. I'm not going to give you a definitive
8 answer without knowing it.

9 Q. There came a point in time you asked her
10 to listen to some audio, of those voicemail box
11 recordings, right?

12 A. That is correct.

13 Q. Was that that day?

14 A. If I could refer to the statement.

15 Q. Sure.

16 A. Yes, it was.

17 Q. Prior to asking her to listen to the
18 audios, did you ask her whether or not there was
19 anything unusual about Mr. Whitehead's voice pattern
20 or inflection or word choice?

21 A. No, I did not.

22 Q. Did she offer to you that there was
23 anything special about the manner in which he spoke?

24 A. No, she did not.

25 Q. Did you check to see whether or not

1 CROSS/Gabriele

2 Valerie Rodriguez had dealt with any of the victims
3 of the identity frauds, at Baron Honda?

4 A. No, I did not.

5 Q. Well, did you show her the names of the
6 victims that had purchased vehicles at Baron Honda
7 and did you ask her whether or not she was familiar
8 with any of those names?

9 A. No, I did not.

10 Q. There came a point in time that you went
11 and spoke to a fella by the name of Nigel DeFreitas?

12 A. That is correct.

13 Q. Where was that?

14 A. August 5th of 2005.

15 Q. You went there with a team of police
16 officers?

17 A. Yes, I did.

18 Q. You went there to execute a search
19 warrant?

20 A. Yes, I did.

21 Q. You had the search warrant with you?

22 A. Yes, I did.

23 Q. You didn't call ahead of time and let them
24 know you were coming?

25 A. No, Mr. Keahon, I didn't.

1 CROSS/Gabriele

2 Q. You arrived there at the residence?

3 A. Yes.

4 Q. What time did you get there?

5 A. What time did I physically get --

6 Q. Yeah?

7 A. -- did I get there.

8 Q. Did you get there?

9 A. Approximately ten.

10 Q. That is in the morning?

11 A. Yes, it is.

12 Q. Did he come outside to meet you?

13 A. No, he did not.

14 Q. Did you show him identification?

15 A. When I had gotten to the house, the house
16 had already been secured by other members of the
17 Identity Theft Unit.

18 Q. What time did they get there?

19 A. They got there approximately around 9:00
20 o'clock in the morning.

21 Q. Did they inform you as part of the
22 investigation that they wouldn't let them in the
23 house?

24 A. No, they did not.

25 Q. Did you learn that Mr. DeFrietas came

1 CROSS/Gabriele

2 outside with his wife and refused to let the fellas
3 in unless he saw a search warrant?

4 A. No, they did not.

5 Q. Have you ever learned that?

6 A. No, sir.

7 Q. Have you ever reviewed Mr. DeFrieta's
8 cross-examination?

9 A. Absolutely not.

10 Q. In front of this jury?

11 A. Are you asking me if I reviewed a witness'
12 testimony.

13 Q. Yes?

14 A. Absolutely not. No.

15 Q. Uh-huh. Well you know that the district
16 attorney has the transcripts of the witnesses that
17 have testified, don't you?

18 A. Yes, I do.

19 Q. You also know that his wife and he both
20 told the officers at the scene that his wife was an
21 assistant district attorney, am I right?

22 A. They told me that she was an assistant
23 district attorney, yes.

24 Q. In Nassau County?

25 A. Yes.

1 CROSS/Gabriele

2 Q. You go inside the house at some point,
3 right?

4 A. That is correct.

5 Q. His brother, Desmond, was there?

6 A. Not when I arrived there, no.

7 Q. Did you check to determine who lived
8 upstairs?

9 A. Did I check to determine.

10 Q. Yeah, yeah?

11 A. Desmond lives upstairs, yes.

12 Q. Desmond who?

13 A. Desmond DeFreitas.

14 Q. Did you learn that he was there earlier
15 when the detectives arrived?

16 A. Yes.

17 Q. Did anyone take a statement from him?

18 A. No, they did not.

19 Q. Did anyone question him?

20 A. No.

21 Q. Did the detectives tell you that they saw
22 him drive away in a maroon Grand Cherokee Jeep?

23 A. A maroon Grand Cherokee Jeep?

24 Q. Jeep, yeah?

25 A. No.

1 CROSS/Gabriele

2 Q. That day or any following days, did you
3 ever speak with a Desmond DeFreitas?

4 A. Yes, I did.

5 Q. When was the last time you spoke with him.

6 A. About two weeks after the search warrant.

7 Q. What about after that?

8 A. No. I never spoke with him after that.

9 Q. After Mr. DeFreitas, Nigel DeFreitas
10 testified in court, did you have any conversations
11 with Nigel DeFreitas before he went home after his
12 testimony? About he and Kylie Copeland and his
13 brother being involved in an identity theft of a
14 vehicle, a maroon Grand Cherokee Jeep?

15 A. Absolutely not, no.

16 Q. Up until today's date, have you ever
17 called Desmond DeFreitas to ask about that vehicle?

18 A. In this investigation, Mr. Keahon, there
19 was --

20 Q. Sir, the question is, did you ever, after
21 Mr. Nigel DeFreitas testified, did you ever call
22 Desmond DeFreitas, after that date of testimony, and
23 ask him the circumstances of him having possession of
24 a particular vehicle?

25 MR. PEARL: Objection. That is not

1 CROSS/Gabriele

2 relevant. It has nothing about a Cherokee in
3 this indictment.

4 THE COURT: I'll see counsel side
5 bar for a moment, please. Thank you.

6 (The following occurred at side
7 bar):

8 THE COURT: Objection, relevance
9 would have been more than a sufficient offer
10 of proof, Mr. Keahon.

11 MR. KEAHON: Put on notice. As a
12 matter of fact, at the time it happened, I
13 called on the district attorney's office and
14 the Suffolk County Police Department, to
15 investigate Nigel DeFreitas. I want to know
16 if he did it.

17 THE COURT: All right. We're
18 dealing with an allegation of criminal
19 behavior on the part of someone not charged
20 but --

21 MR. KEAHON: Nigel and his brother,
22 Desmond, were all but accused of doing it with
23 Kylie Copeland.

24 MR. PEARL: It is a completely
25 collateral issue at the trial. He's trying to

1 CROSS/Gabriele

2 impeach this witness and trying to impeach two
3 other witnesses through --

4 MR. KEAHON: Stop.

5 THE COURT: How much longer will
6 you cross-examine about this?

7 MR. KEAHON: Another 30 seconds.

8 It is about the bad act of somebody
9 else. Even if it is tangentially related to
10 the possibility of exculpatory evidence, we'll
11 allow the inquiry. He's bound by the answer.
12 Thank you.

13 (The following occurred in open
14 court):

15 BY MR. KEAHON:

16 Q. Detective, after Nigel DeFreitas testified
17 in court before this jury, did you have any
18 conversations with him or his brother, about an
19 allegation that his brother and he and Kylie Copeland
20 were involved in an identity fraud on a maroon Grand
21 Cherokee Jeep?

22 A. I have no idea what you're talking about,
23 Mr. Keahon, absolutely not.

24 Q. Mr. Pearl never had any conversations with
25 you about the questions that Mr. DeFreitas was asked

1 CROSS/Gabriele

2 on the witness stand?

3 A. No, he did not.

4 Q. By the way, Mr. DeFreitas testified in the
5 grand jury, didn't he?

6 A. Yes, he did.

7 Q. And he testified on two occasions.

8 A. Right?

9 Q. Right?

10 A. I believe it was two occasions, yes.

11 Q. And he got immunity in the grand jury,
12 didn't he?

13 A. You'd have to ask the district attorney.
14 If that is what happens in the grand jury, then, yes,
15 he did get immunity.

16 Q. Is it your testimony, sir, as you sit here
17 now, that you don't know whether he got immunity in
18 the grand jury when he testified?

19 A. Again --

20 Q. Is that your testimony?

21 A. I don't know the inner workings of the
22 grand jury.

23 Q. Let's not talk about inner workings. He
24 was a witness that you went and spoke to, yes?

25 A. That is correct, yes.

1 CROSS/Gabriele

2 Q. You did a search warrant on his house,
3 yes?

4 A. Yes.

5 Q. You played audio, voice mailbox tapes for
6 him, right?

7 A. Yes.

8 Q. You arranged for him to be subpoenaed, to
9 come out to the grand jury, right?

10 A. The district attorney arranged for him to
11 be subpoenaed.

12 Q. Sure. But you were part of that, were you
13 not?

14 A. My unit was, yes. Yes, we were.

15 Q. When he came out to testify in the grand
16 jury, you were there.

17 A. When he testified in the grand jury.

18 Q. You were not in the grand jury, sir?

19 A. Okay, I want to make it clear, Mr. Keahon.

20 Q. We'll make it clear. In this building.
21 You were here when he responded to the grand jury, to
22 testify.

23 A. Yes.

24 Q. Okay. You're aware that he was called in
25 to the grand jury to testify, right?

1 CROSS/Gabriele

2 A. That is correct.

3 Q. You're aware that a person either waives
4 immunity or gets immunity, right?

5 A. Again, Mr. Keahon, if I were to explain
6 it, I would not be able to give justice to the issue
7 of immunity in the grand jury. I cannot give a clear
8 answer to that.

9 Q. You have been a police officer how long?

10 A. Sixteen years.

11 Q. You've testified, how many times?

12 A. Numerous times.

13 Q. You've testified in the grand jury how
14 many times?

15 A. Numerous times.

16 Q. If you don't get immunity in the grand
17 jury when you testify, if you don't waive it, you get
18 it, right?

19 MR. PEARL: Judge, I'm just going
20 to object.

21 THE COURT: Sustained.

22 Q. When you spoke with Nigel DeFreitas, you
23 showed him the picture of Lamar Whitehead, right?

24 A. Yes, I did.

25 Q. You asked him, is this Lamar Whitehead,

1 CROSS/Gabriele

2 right?

3 A. Yes.

4 Q. You told him that you wanted to take any
5 computers that were in the house, am I correct?

6 A. That is correct.

7 Q. You told him that you believed his
8 computers were used to assist a crime, yes?

9 A. Told him that the --

10 Q. Sir, the question was specific. Did you
11 tell him that you believed his computers were used to
12 assist a crime?

13 A. I can't answer that with a yes or no
14 answer, Mr. Keahon.

15 Q. Page 108 --

16 THE COURT: Let your colleague
17 finish phrasing the question.

18 Do we have the line and the page?

19 MR. KEAHON: I was just giving it.

20 Q. I said Page 108, Line 6:

21 "Question: Did you tell him that you
22 believed that his computers were used to assist in a
23 crime?

24 "Answer: Yes, I did."

25 MR. PEARL: My objection is

1 CROSS/Gabriele

2 improper impeachment. There is no issue to
3 impeach Det. Gabriele. He said he couldn't
4 answer yes or no.

5 MR. KEAHON: He just answered yes.

6 THE COURT: Overruled.

7 Q. You were able to answer when I asked you
8 one time before, weren't you?

9 A. Yes, I was.

10 Q. You were able to answer it with a yes,
11 right?

12 A. Yes.

13 Q. All right. Did you tell Mr. DeFreitas
14 that he was under suspicion, himself, for being part
15 of a fraud?

16 A. That is correct.

17 Q. Who first brought up the name "Whitehead"?

18 A. I did.

19 Q. Did you tell him you believed Lamar
20 Whitehead was involved in a large-scale fraud?

21 A. Yes, I did.

22 Q. Did you tell him that it was possible for
23 him to be arrested also?

24 A. Yes, I did.

25 Q. Did you tell Mr. DeFreitas that Lamar

1 CROSS/Gabriele

2 Whitehead is a suspect in a number of identity
3 thefts?

4 A. Yes, I did.

5 Q. Did you tell him that you had brought some
6 audiotapes you wanted him to listen to, and see if
7 you can identify Lamar's voice?

8 A. That is correct.

9 Q. So you told Mr. DeFreitas that you were
10 investigating fraud cases, right?

11 A. That is correct.

12 Q. You told him that he was under suspicion,
13 right?

14 A. Initially, yes.

15 Q. You told him that you were taking the
16 computers?

17 A. That is correct.

18 Q. You told him he could possibly be arrested
19 himself?

20 A. That -- yes, that is correct.

21 Q. You showed him a picture of Lamar
22 Whitehead and asked him to identify it?

23 A. Yes.

24 Q. You then tell him that you believe that
25 Lamar Whitehead was involved in a number of identity

1 CROSS/Gabriele

2 thefts?

3 A. That's correct.

4 Q. Then you ask him to listen to some
5 voicemail audios?

6 A. Recordings, yes, that is correct.

7 Q. You wanted him to identify Lamar's voice,
8 right?

9 A. If he could, yes.

10 Q. Before playing these audiotapes for him,
11 did you ask him whether or not there was anything
12 specific about the way Mr. Whitehead spoke, the
13 inflection of his voice or the word choice?

14 A. No, I did not.

15 Q. Did you get Nigel DeFreitas' phone records
16 for 2004 and 2005?

17 A. I have Nigel DeFreitas' phone records. I
18 do not know the exact date range. I'd have to go
19 back to the record.

20 Q. Do you have them for 2004 and 2005?

21 A. Again, I'd have to go back and look at the
22 records.

23 Q. How about for his brother, Desmond
24 DeFreitas', phone records?

25 A. No, I do not.

1 CROSS/Gabriele

2 Q. Do you have them for 2004?

3 A. I do not have Desmond DeFreitas' phone
4 records no.

5 Q. Do you have them for 2004?

6 A. I do not have any of DeFreitas' phone
7 records.

8 Q. Do you have any of Kylie Copeland's phone
9 records for 2004?

10 A. No, I do not.

11 Q. We heard testimony from Anita Bryant, you
12 know her, do you not?

13 A. Yes, I do.

14 Q. You were the one who arrested her?

15 A. That is correct.

16 Q. She spent several days in jail, did she?

17 A. I don't know the exact amount of time she
18 spent in jail, no.

19 Q. She was involved in the Maria Macarle and
20 Christina Brooks and David Ridenour frauds?

21 A. She was involved with the Maria Macarle
22 Kings Cycle and then Maria Macarle Commerce Bank.

23 Q. What about Christina Brooks?

24 A. I only charged her with two counts.

25 Q. No, I understand that. But, was she

1 CROSS/Gabriele

2 involved in the Christina Brooks?

3 A. Again, I only charged her with two counts.
4 Those are the only two I'm privy to, that she was
5 involved in.

6 Q. On that Kings Cycle, she used the license
7 in the name of Maria Macarle?

8 A. Yes.

9 Q. She also used the license in the name of
10 Christina Brooks, did she not?

11 A. I'm not aware of her using anything with
12 Christina Brooks, no.

13 Q. Well, were checks ever made out to a
14 Christina Brooks in this case?

15 A. I'd have to go back and look at the
16 particular --

17 THE COURT: Yes.

18 (Pause)

19 A. Yes, Christina Brooks and Maria Macarle,
20 yes. They were both.

21 Q. So Anita Bryant was involved with
22 Christina Brooks?

23 A. I charged Maria Macarle with the two we
24 talked about.

25 Q. I didn't ask you that. I'm asking you

1 CROSS/Gabriele

2 after looking at your records, am I correct that
3 there were checks that went back and forth from Maria
4 Macarle to Christina Brooks?

5 A. I would have to see the exact exhibit to
6 give you a full answer.

7 Q. Did you question Anita Bryant about her,
8 Anita Bryant, about her making believe she was
9 Christina Brooks with a check?

10 A. No, again, I charged her with two -- two
11 counts, and those were the counts that I was
12 interested in.

13 Q. Fine. But she's cooperated, hasn't she?

14 A. Yes.

15 Q. And as a matter of fact, did you see the
16 agreement that the district attorney's office made
17 with her attorney?

18 A. No, I did not.

19 Q. I think that's D? Do you see Mr. Philip
20 Murphy? That was her attorney, was it not?

21 A. Yes, it was.

22 Q. And we see *People vs. Anita Bryant*, with a
23 docket number?

24 A. Yes.

25 Q. There is actually two docket numbers, am I

1 CROSS/Gabriele

2 correct?

3 A. Yes, 51 and 52, yes.

4 Q. "Dear Mr. Murphy, this letter serves to
5 formalize our discussion in court on July 13, 2006.
6 The offer on the above case is to allocute against
7 the co-defendant, Lamar Whitehead, plead guilty to
8 count six, the D Felony, Identity Theft in the Fifth
9 Degree, in violation of Penal Law 190.80(1) and plead
10 guilty to count eight, the A Misdemeanor, of Unlawful
11 Possession of Personal Identification Information in
12 the third degree, in satisfaction of Penal Law
13 190.80(1).

14 "If Ms. Bryant allocutes" -- we know that
15 means testify?

16 A. That is correct.

17 Q. "Against the co-defendant and Lamar
18 Whitehead and agrees to testify at any trial, at the
19 time of sentencing the people will allow Ms. Bryant
20 to withdraw her plea of the felony, and we will agree
21 to dismiss it." That means it's over, right?
22 Dismiss it?

23 A. That is the district attorney. Not the
24 police department.

25 Q. "The sentence on the A misdemeanor will be

1 CROSS/Gabriele

2 a conditional discharge?"

3 A. That's what it says, yes.

4 Q. You know what a conditional discharge is?
5 No jail, no probation?

6 A. Correct.

7 Q. "If Ms. Bryant fails to continue to
8 cooperate, the people will seek a sentence of six
9 months incarceration and five years probation.
10 Sentencing on Ms. Bryant's plea will be adjourned
11 until the co-defendant's case is resolved."

12 This case isn't resolved yet, is it?

13 A. No, it's not, Mr. Keahon.

14 Q. Ms. Bryant hasn't been sentenced yet, has
15 she?

16 A. Not that I'm aware of, no.

17 Q. "Should your client fail to resolve this
18 case by the next court date, this case will be marked
19 for trial, where she faces up to two and a half to
20 seven years on the top charge." Right?

21 A. That's what it says, yes.

22 Q. And the top charge is the D felony,
23 Identity Theft in the First Degree, right?

24 A. Correct.

25 Q. And he's got about thirty of those charges

1 CROSS/Gabriele

2 against him, right?

3 MR. PEARL: Objection, your Honor.

4 THE COURT: Sustained.

5 Q. "Should your client fail to resolve this
6 case by the next court date, this case will be marked
7 for trial where she faces up to two and a half to
8 seven years on the top charge. If you wish to
9 discuss the case further, please contact me at the
10 Economic Crime Bureau at", and a number, right?

11 A. That is correct. Yes.

12 Q. The district attorney that signed this
13 letter is Douglas Byrne, right?

14 A. Yes, sir.

15 Q. He worked with you on this case, did he
16 not?

17 A. Yes, he did.

18 THE COURT: You may continue, Mr.
19 Keahon.

20 MR. KEAHON: Thank you.

21 THE COURT: You're welcome.

22 Q. Is it the normal procedure when you do a
23 search warrant, to make note of the name of the
24 individuals that are present on the property?

25 A. Yes.

1 CROSS/Gabriele

2 Q. You're the lead detective in this case?

3 A. Yes, I am.

4 Q. As a lead detective, you get all of the
5 paperwork, the reports that are gathered by other
6 detectives that work on the case?

7 A. Yes.

8 Q. Did you get notes, reports, from any of
9 the other detectives, the police officers that
10 executed the search warrant on Nigel DeFreitas's
11 house, indicating that a Desmond DeFreitas was there,
12 spoken to, and was with his girlfriend?

13 A. No.

14 Q. To this day are you aware or not aware
15 that Desmond DeFreitas was there when you hit the
16 house?

17 A. Yes, he was there. Okay.

18 Q. How do you know that?

19 A. Detectives from the Identity Theft Unit
20 advised me of that.

21 Q. Did they tell you who he was there with?

22 A. He was there with his girlfriend.

23 Q. Did they advise you that he was ready to
24 go on a vacation?

25 A. Yes, they did.

1 CROSS/Gabriele

2 Q. Did they advise you that he drove away
3 from the property in a particular vehicle, a maroon
4 Jeep Grand Cherokee?

5 A. No, they did not.

6 Q. Did they indicate to you how he left the
7 property?

8 A. No, they didn't.

9 Q. What type of vehicle?

10 A. No, they didn't.

11 Q. We've read the agreement the district
12 attorney's offered to Mr. Murphy, on behalf of Mr.
13 Murphy's client, Anita Bryant. Did you ever indicate
14 to her that if she testified against my client, that
15 she'd do better than that written agreement signed by
16 her?

17 A. No, Mr. Keahon.

18 Q. That in fact all charges would be
19 dismissed?

20 A. Absolutely not.

21 Q. Do you know if the district attorney's
22 office indicated to her that all charges would be
23 dismissed?

24 A. No.

25 Q. Have you seen her testimony on

1 CROSS/Gabriele

2 cross-examination in front of this jury, as to what
3 she said about all charges being dismissed?

4 A. No, I did not.

5 Q. We've heard some testimony about AeroBeep,
6 right?

7 A. Correct.

8 Q. Now, I believe on your direct examination
9 going back days or weeks, when you first took the
10 stand?

11 A. (Nods)

12 Q. You indicated that there were two blocks
13 of ten numbers that were purchased at AeroBeep, am I
14 correct?

15 A. There were two blocks of numbers. The
16 first was ten. I don't believe the second one was
17 ten, no.

18 Q. Thirteen?

19 A. Somewhere around there.

20 Q. And one block was purchased in the name of
21 John Willson, and another block was purchased in the
22 name of Henry Black?

23 A. That is correct.

24 Q. Now, we know that you showed a picture of
25 my client to Nigel DeFreitas, right?

1 CROSS/Gabriele

2 A. That is correct, yes.

3 Q. Did you ever go down to AeroBeep and show
4 a picture of my client to any of the people that
5 worked there?

6 A. Yes, I did.

7 Q. And who did you speak with?

8 A. Mr. Taneja.

9 Q. Did you take a statement from him?

10 A. No, I did not.

11 Q. Was Mr. Taneja the individual who
12 testified at this trial?

13 A. Yes, he did.

14 Q. You said you did take a statement from
15 him?

16 A. I did not take a statement from him, no.

17 Q. Did you make any notes as to your
18 interview with him?

19 A. No, I did not.

20 Q. Was there a reason?

21 A. It wasn't necessary.

22 Q. He told you nothing of importance?

23 A. No, I went there and served him with a
24 subpoena for the AeroBeep records.

25 Q. Okay. Well, did you question him at all?

1 CROSS/Gabriele

2 A. I simply asked him if he recognized your
3 client.

4 Q. Did he give you a statement as to that
5 effect?

6 A. He told me no, that he did not recognize
7 him, no.

8 Q. Well, did you note that anywhere?

9 A. No, I did not.

10 Q. Did you tell the district attorney's
11 office that you went there and showed a picture of my
12 client to the fellow that owned AeroBeep?

13 A. Yes, they knew that I showed him a
14 picture, yes.

15 Q. Do you know whether or not anybody told me
16 that?

17 A. I'm telling you now, Mr. Keahon. I don't
18 know if anyone told you that before.

19 MR. KEAHON: I have an application
20 to make.

21 THE COURT: Thank you.

22 See counsel at side bar.

23 (The following occurred at side
24 bar):

25 THE COURT: Mr. Keahon.

1 CROSS/Gabriele

2 MR. KEAHON: I was never told about
3 it and the evidence is Brady.

4 MR. PEARL: All Rosario has been
5 turned over, every piece of paper and note the
6 detective has and it is not Brady, judge.

7 MR. KEAHON: Could you excuse the
8 jury. Because I have to put something on the
9 record.

10 THE COURT: They were going to get
11 a break in about five minutes any way, so...

12 (The following occurred in open
13 court):

14 THE COURT: The jury will be given
15 a brief recess. We'll call you back in.

16 I remind you not to form or express
17 an opinion about the case until submitted to
18 you for deliberations. As I've told you, do
19 not discuss this case or any matter connected
20 to the trial amongst yourselves or with anyone
21 else. Nor may you allow it to be discussed in
22 your presence.

23 Don't read or listen to accounts
24 reported in the news media, don't visit or
25 view the place or places where the offense

1 CROSS/Gabriele

2 charged was allegedly committed or any other
3 place involved in this case, and promptly
4 report to the court by way of coming to me
5 personally, through a court officer, any
6 incident within your knowledge involving any
7 attempt to influence any member of the jury.

8 (The Jury is excused)

9 THE COURT: Thank you, very much.

10 Please stand down. You may be
11 recalled to the stand. Thank you.

12 (The Witness is excused)

13 THE COURT: Please be seated.

14 Outside of the presence of the
15 jury.

16 MR. KEAHON: Judge, I move for a
17 mistrial at this time.

18 This witness has testified that he
19 interviewed a Mr. Taneja, I believe. Who
20 testified at this trial. Mr. Taneja. He took
21 no notes. No reports. And I stumbled into a
22 very extremely dangerous area, which I
23 couldn't go into with the witness because I
24 didn't know whether or not he had been shown a
25 picture of my client, or not. I never

1 CROSS/Gabriele

2 received notification that he was shown a
3 picture of my client, a one picture i.d.

4 It is clearly Brady when he was
5 unable to pick him out. I never have been
6 notified that such an identification procedure
7 took place. You, as the judge on this case
8 from the beginning, have never heard that that
9 identification procedure took place. I would
10 have asked the witness, Mr. Taneja, I would
11 have gone into that at great length, and I was
12 careful of how I did it with this witness,
13 because I didn't think he showed him the
14 picture, and that was the point of the
15 questioning.

16 He showed the picture to Mr. Nigel
17 DeFreitas and yet he chose not to show a
18 picture -- or did you show a picture to Mr.
19 Taneja? And when he says, yes. I didn't know
20 what to do. That is why I followed it up with
21 knowing if he would have taken a positive
22 statement on an i.d. there would be a
23 statement or notes and that is why I diverted
24 myself to, did you take any notes or reports.
25 He said no. I felt I was on firmer ground at

1 CROSS/Gabriele

2 that point, because had an identification
3 taken place, there would have been notes.
4 Something would have reflected that.

5 And then the witness admitted that
6 he did show the picture to him and he didn't
7 take notes or reports, and I asked him why,
8 and he said because he didn't identify him.
9 Or couldn't identify him. So.

10 THE COURT: Your skillful
11 questioning did not indicate at all that you
12 were going through uncharted waters. My
13 compliments to you, Mr. Keahon.

14 I'm not disbelieving you. I'm
15 complimenting you because I take your word at
16 face value. However, your questioning was
17 quite skillful in that regard.

18 What was brought up at side bar
19 and we're discussing in open court outside the
20 presence of the jury is the people's position.

21 MR. PEARL: Judge, all Rosario has
22 been turned over, all photographs, everything.
23 Including whether or not there was no notes
24 taken. So there is no additional Rosario to
25 turn over to the detective.

1 CROSS/Gabriele

2 Mr. Keahon is not prejudiced. It
3 is not Brady. He couldn't say he could not
4 identify him. It is not Brady if a person
5 can't identify him. You don't have to notice
6 non i.d.s to the defendant under 710.30. We
7 only have to notice identifications we intend
8 to introduce at trial. In this case, we did.
9 We noticed everything. There has been no
10 Rosario violation and there has been no Brady
11 violation.

12 MR. KEAHON: Could we take a brief
13 recess for five minutes?

14 THE COURT: We'll take a brief
15 recess and the court will rule.

16 (Brief recess)

17 THE COURT: If I could see counsel
18 at side bar, please, off the record for just a
19 moment.

20 (Side bar discussion held off the
21 record)

22 THE CLERK: Case on trial, People
23 versus Whitehead. All parties present outside
24 the presence of the jury.

25 THE COURT: Thank you.

1 CROSS/Gabriele

2 Before we continue after our side
3 bar conference, the court's preliminary
4 research, *People vs. McDonald* 287 A.D.2d 655
5 and 280 A.D.2d 687, that is *People vs.*
6 *Robinson*.

7 And *People vs. de la Rosa*, which is
8 a slip opinion. Found at 202 Misc. LEXIS,
9 1498. All that has been gleaned so far, if
10 counsel wishes a continuance of trial to
11 research this matter more fully, I would allow
12 counsel for the defense, or the people that
13 continuance, or do you wish to proceed at this
14 time, Mr. Keahon?

15 MR. KEAHON: Judge, the court has
16 made its decision not to grant a mistrial
17 based upon the cases that have been cited by
18 the court.

19 THE COURT: No. Mr. Keahon, I do
20 apologize. That was my preliminary research.
21 The question is open, if you wish it to be so.
22 If you would like that continuance, I would
23 grant you that so you could research the
24 matter more fully.

25 MR. KEAHON: Yes, I would.

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2 THE COURT: All right.

3 Then -- which like.

4 Would the rest of the afternoon be
5 sufficient?

6 MR. KEAHON: Yes.

7 THE COURT: We'll discharge the
8 jury for the day and tell them to come back
9 tomorrow morning at eleven o'clock. All
10 right?

11 MR. PEARL: Judge, just a couple of
12 questions. We still intend on finishing up
13 tomorrow.

14 THE COURT: Yes.

15 MR. PEARL: And closings.

16 THE COURT: We'll try it.

17 MR. PEARL: It is the people's
18 position not only is this not Brady.

19 THE COURT: I suggest, Mr. Pearl,
20 that you take advantage of the hiatus which
21 your colleague has sought and we'll research
22 the matter tonight and the court will rule
23 tomorrow.

24 MR. PEARL: Judge, I want to say my
25 case is still open. Mr. Keahon wants me to

1 CROSS/Gabriele

2 recall Mr. Taneja to cross him on that point.
3 I can bring him in tomorrow if he wants.

4 THE COURT: If you would have him
5 available for testimony, please.

6 MR. PEARL: I have to send somebody
7 out to Brooklyn. Is that what Mr. Keahon
8 wants?

9 MR. KEAHON: I don't know.

10 THE COURT: If you have him
11 available for testimony tomorrow, please, the
12 court will be happy to issue a so-ordered
13 subpoena.

14 MR. KEAHON: Could we approach up
15 to the front of the bench quickly, judge. Off
16 the record.

17 (Discussion held off the record)

18 THE COURT: Bring in the jury.

19 THE COURT OFFICER: Jury is
20 entering.

21 THE COURT: All rise, please.

22 (The following occurred in open
23 court with the jury present):

24 THE COURT: Thank you. Please be
25 seated. Please be seated, everyone.

1 CROSS/Gabriele

2 THE CLERK: Case on trial, *People*
3 *versus Whitehead*, the jury and all parties are
4 present. Counsel waive the roll.

5 THE COURT: Recall the witness to
6 the stand, please.

7 (The Witness resumes the stand)

8 THE CLERK: Detective, if you could
9 take a seat. I remind you, you're testifying
10 under oath.

11 THE COURT: You may continue your
12 inquiry Mr. Keahon.

13 MR. KEAHON: Thank you, judge.

14 BY MR KEAHON:

15 Q. We were talking about, detective, your
16 visit to AeroBeep?

17 A. Yes.

18 Q. And you spoke with who?

19 A. Kris Taneja.

20 Q. He was a witness at this trial?

21 A. Yes, he was.

22 Q. And you indicated that you showed him the
23 picture of my client and he couldn't identify him?

24 A. That is correct.

25 Q. Was it multiple pictures or one picture?

1 CROSS/Gabriele

2 A. No, it was just one picture.

3 Q. That is kind of suggestive, isn't it, one
4 picture?

5 MR. PEARL: Objection.

6 THE COURT: Sustained, form.

7 Q. In fairness, when you do a photo display,
8 don't you normally put six pictures into the photo
9 display so the person isn't put on notice that you're
10 interested in this one particular person?

11 A. When you're doing a photo array, correct,
12 yes.

13 Q. And you told us you made no notes or
14 reports on the failure of Mr. Taneja to pick out my
15 client, right?

16 A. That's correct.

17 Q. And when is the first time that you told
18 the district attorney's office, if you ever did, of
19 the failure of Mr. Taneja to pick out my client?

20 A. After I returned the subpoenaed
21 information.

22 Q. Did you attach a note to the district
23 attorney, that you showed the picture of -- one
24 picture to Mr. Taneja and he was unable to pick out
25 my client?

1 CROSS/Gabriele

2 A. No, I didn't.

3 Q. And who was the district attorney that you
4 did this with?

5 A. Mr. Pearl.

6 Q. Have you seen any note that he made,
7 referencing what you told him?

8 A. No.

9 Q. Are you aware of whether or not I was ever
10 put on notice of this identification procedure and
11 the failure --

12 MR. PEARL: Judge, objection.

13 Q. Mr. Taneja to -- pick out my client?

14 THE COURT: Sustained, form.

15 Rephrase, Mr. Keahon, please.

16 Q. Have you seen any identification to me by
17 the letter or note or E-mail or fax, that such an
18 identification -- non-identification took place?

19 MR. PEARL: Objection, judge.

20 THE COURT: Sustained. Rephrase,

21 Mr. Keahon.

22 Q. Are you aware of anybody from the district
23 attorney's office, putting me on notice as to what
24 you just told us happened?

25 MR. PEARL: Objection, judge.

1 CROSS/Gabriele

2 THE COURT: It will be opened in
3 the presence of the jury.

4 THE COURT OFFICER: No, 125.

5 THE COURT: Thank you.

6 (The following occurred in open
7 court):

8 THE COURT: Detective, the record
9 will indicate that the court is directing you
10 to open up that bag, all right? Thank you.

11 (The Witness complies)

12 Q. I want to see it, please?

13 THE COURT OFFICER: Exhibit 125.

14 MR. KEAHON: Thank you.

15 Q. This is the jacket that you say you found
16 in the back seat?

17 A. Yes, sir.

18 Q. Is there any name in it?

19 A. I don't believe there is, no.

20 Q. What's the size?

21 A. I don't know. I'd have to look at it.

22 Q. Two extra large?

23 A. If that's what it says, Mr. Keahon, I take
24 your word for it.

25 MR. KEAHON: Judge, I'd like my

1 CROSS/Gabriele

2 client to put it on.

3 MR. PEARL: Judge, I have no
4 objection as long as I get the opportunity to
5 cross-examine. It is testimony at this point.

6 THE COURT: See counsel side bar,
7 please.

8 (The following occurred at side
9 bar):

10 MR. KEAHON: I'm asking for a
11 mistrial. Now. This district attorney stood
12 before this jury and said I have no objection
13 as long as I get a chance to cross-examine
14 him. My client. I'm moving for a mistrial.

15 THE COURT: Mr. Keahon, he was
16 visually testifying. Case law came up a few
17 months ago, I don't remember the exact case
18 citation, I can get it for you, because we did
19 the research. When a defendant demonstrate
20 his teeth to the jury, he said in front of
21 them and showed his teeth, there was dental
22 work that was done, it is not considered
23 testimony if it is a demonstration like that.

24 MR. PEARL: This is different.
25 This is trying on a jacket.

1 CROSS/Gabriele

2 THE COURT: It is a physical
3 demonstration. It is not considered
4 testimony.

5 All right. The -- since we're
6 going to have a hiatus tonight anyway, reserve
7 decision on the application for a mistrial.
8 And your client can try that on in the
9 presence of the jury and then take it off and
10 put it back and your cross-examination will
11 continue. Thank you.

12 (The following occurred in open
13 court):

14 BY MR. KEAHON:

15 Q. Detective, this jacket has been in your
16 custody or in the police department custody since
17 January 25th of 2006?

18 A. That is correct.

19 MR. KEAHON: Judge, could my
20 client.

21 THE COURT: Yes, Mr. Whitehead?

22 (The Defendant puts on the jacket)

23 Q. Did you look to see what size this jacket
24 was?

25 MR. PEARL: Judge, objection to the

1 CROSS/Gabriele

2 questioning now, based on what we just had the
3 side bar on. The jacket is on. You can't now
4 question him based on the jacket being on.
5 We're going way over what we just had the side
6 bar on.

7 THE COURT: Thank you. Note your
8 exception.

9 Mr. Keahon, I'll hear the question
10 fully framed, please.

11 MR. KEAHON: Sure.

12 BY MR. KEAHON:

13 Q. This jacket is the one you found in the
14 back seat?

15 A. That is correct.

16 Q. This jacket is two extra large?

17 A. If that's what the size is, yes.

18 Q. Would you take a look at the jacket for
19 me, please? Tell me what the size is?

20 (Hanging)?

21 A. Two XL.

22 Q. Now, you indicated that you found certain
23 items within that jacket.

24 A. That's correct.

25 Q. And I think you told us you found some

1 CROSS/Gabriele

2 pieces of paper in a jacket sleeve zipper?

3 A. That's correct.

4 Q. Were any pictures taken indicating that
5 you found something within that area?

6 A. No, there were not.

7 Q. After you do a search warrant on a
8 vehicle, do you have to do a search warrant return?

9 A. Yes.

10 Q. Is a return, is it a piece of paper that
11 indicates what you found?

12 A. Yes, that's correct.

13 Q. And where you found it?

14 A. What we found. Not where we found it.

15 Q. Is there anywhere in the search warrant
16 return, for the search warrant on that vehicle, that
17 indicates that you found a number of pieces of paper
18 from the jacket sleeve?

19 A. No, there's not. There is assorted papers
20 on the search warrant return.

21 Q. You're not telling this jury that you or
22 anyone else indicated there were assorted papers
23 found in the jacket sleeve of that jacket, are you?

24 A. Assorted papers. The search warrant was
25 for the vehicle.

1 CROSS/Gabriele

2 Q. Let's try it again.

3 I asked you whether or not there's any
4 indication on the search warrant return, that any
5 papers were found in the sleeve of the jacket?

6 A. Not on the return, no.

7 Q. The return indicated "assorted papers"?

8 A. Correct.

9 Q. I then asked you, is it your position in
10 front of this jury, that the search warrant return
11 indicated assorted papers were found in the jacket
12 sleeve?

13 A. No.

14 MR. KEAHON: May I see 126 A, B, C,
15 and D?

16 Q. As a matter of fact, sir, nowhere in the
17 return do you indicate assorted papers were found in
18 any portion of the jacket, do you?

19 A. No, it's not required.

20 MR. KEAHON: Judge, I asked the
21 witness whether or not on the search warrant
22 return it indicated any papers were found
23 within that coat, and he said no, it's not
24 required. I'd ask you to instruct the witness
25 to merely answer my question.

1 CROSS/Gabriele

2 THE COURT: Thank you. There is an
3 objection to the answer. Sustained.

4 Just answer the question. If you
5 can, please, do not volunteer additional
6 information.

7 THE WITNESS: Yes.

8 Yes, your Honor.

9 Q. One of the items found you say was found
10 in the jacket zipper pocket, was a piece of paper
11 with a long number on the back, the name,
12 "Rhonda Ghassabian", and some other writing on it,
13 right?

14 A. Yes.

15 Q. Was this ever given to your handwriting
16 expert to determine whether or not my client wrote
17 this?

18 A. No, it was not.

19 Q. Was this piece of paper ever sent for a
20 fingerprint analysis to see who may have touched this
21 last?

22 A. No, it was not.

23 Q. To this day, has it been done?

24 A. No, it has not.

25 Q. Are you limited in any fashion as to when

1 CROSS/Gabriele

2 you can send items of evidence to -- for analysis?

3 A. No, we're not.

4 Q. I think you also testified that there was
5 a laptop case, right?

6 A. Correct.

7 Q. And a number of items were found within
8 that laptop?

9 A. That's correct.

10 Q. Paperwork?

11 A. Yes.

12 Q. Were any of those items sent for analysis?

13 A. No.

14 Q. Was there anything about the paperwork of
15 the items that were found in the coat sleeve jacket
16 that led you to believe that an analysis wouldn't be
17 successful?

18 A. It was determined at the time that it
19 wasn't needed, no.

20 Q. So you chose not to do that?

21 A. And it had been handled by a number of
22 people. So, yes, I chose not to do it at that time.

23 Q. When you say it had been handled "by a
24 number of people", I asked you whether or not you
25 wore latex gloves prior to doing the search warrant

1 CROSS/Gabriele

2 in order not to contaminate any item of evidence and
3 you said no, you chose not to wear latex gloves,
4 correct?

5 A. That is correct.

6 Q. What about the other fellas who helped you
7 with the search?

8 A. No latex gloves.

9 Q. We have a check that was part of the Kylie
10 Copeland case, with Smithtown Range Rover, that was
11 sent to identification, and they came up with his
12 print on it?

13 A. That is correct.

14 Q. So you didn't know whether or not those
15 items were contaminated or not, did you?

16 A. Which items, sir.

17 Q. The items that you took out of the sleeve
18 of the jacket?

19 A. No, I did not.

20 Q. I think you told us none of the items that
21 were taken out of the laptop case were checked for
22 fingerprints?

23 A. No, they weren't.

24 Q. You told us three phones that you took out
25 of the car were not?

1 CROSS/Gabriele

2 A. That's correct.

3 Q. I think you testified that you took a
4 computer out of 92 -- what was the address?

5 A. Howland Avenue.

6 Q. You did a search warrant on that house.

7 A. Yes, I did.

8 Q. Did you send that computer to the lab for
9 a fingerprint analysis?

10 A. Yes, I did.

11 Q. And whose fingerprints did you find on
12 that computer?

13 A. No one's.

14 Q. When you did the search warrant of that
15 house at 92 Howland, was anybody home?

16 A. No one was home, no.

17 Q. How did you get in the house?

18 A. The Teaneck Police Department climbed
19 through the window. They pryed a window open,
20 climbed through it, and opened the door.

21 Q. So there was an unlocked window in the
22 house?

23 A. No, they had to pry the window open.

24 Q. When you say, "pry it open", what do you
25 mean?

1 CROSS/Gabriele

2 A. They had to use something to open the
3 window up.

4 Q. You weren't there when they entered. You
5 were around front?

6 A. That's correct.

7 Q. So you don't know what they had to do?

8 A. I didn't see them but I know they had to
9 open the window, yes.

10 Q. Yes, we agree they opened the window. But
11 you're indicating to the jury that he had to pry it
12 open. What do you mean by that?

13 A. They had to force entry into a window.

14 Q. By pushing the window up?

15 A. I'm assuming, yes. I wasn't there -- I
16 wasn't there witnessing them making entry into the
17 window.

18 Q. The point is the window was not locked,
19 was it?

20 A. I can't tell that for sure, no.

21 Q. So when you indicated to the jury just now
22 that they had to pry it open and they had to use
23 something, weren't you kind of inferring to the jury
24 that the windows were locked and they had to somehow
25 use an instrument to get in?

1 CROSS/Gabriele

2 A. Yes.

3 Q. But you don't know that, do you?

4 A. Yes, I do.

5 Q. Oh, you do?

6 A. From what the Teaneck Police Department
7 told me, yes.

8 Q. What did they tell you?

9 A. That they had to open the window, force
10 the window open and someone had to crawl in to open
11 up the door.

12 Q. When we say "force the window open", that
13 means taking the hands and pushing it up, right?

14 MR. PEARL: Objection.

15 THE COURT: Sustained. Rephrase
16 please, Mr. Keahon. Thank you.

17 BY MR. KEAHON:

18 Q. Did they tell you the window was locked?

19 A. They didn't tell me the window was locked.
20 They told me they had to force the window open.

21 Q. When you get inside, at that point in
22 time, do you do a video of what you see in the place?

23 A. No, we don't.

24 Q. Do you do a video of what you recover and
25 where?

1 CROSS/Gabriele

2 A. No, we don't.

3 Q. One of the items you testified about was
4 176-A & B, do you remember that?

5 A. I don't know the numbers off the top of my
6 head. You have to tell me what they are.

7 Q. That is the items you took from the house,
8 that Katherine Reid, and it had a tab with Lamar
9 Whitehead, do you recall that?

10 A. Yes. Yes, I do.

11 Q. I think you told us that you found that in
12 a bag?

13 A. Yes.

14 Q. And it had tape on it.

15 A. Yes.

16 Q. And that particular item, where was that
17 in the bag?

18 A. That was towards the bottom of the bag in
19 an envelope.

20 Q. I see.

21 Q. Where is the envelope?

22 A. The envelope is up in the boxes of
23 evidence, up in the office upstairs, I believe.

24 Q. Was it labeled in some fashion?

25 A. I'm not sure I'm understanding your

1 CROSS/Gabriele

2 question, counsel.

3 Q. Yeah. The envelope that you say you found
4 that particular item in, that is upstairs, is it
5 labeled in some fashion?

6 A. It's in a box of evidence taken from the
7 house, yes.

8 Q. Is that envelope labeled in such a fashion
9 that indicates within this envelope we found that
10 document --

11 A. I'd have to go up and look at it. I don't
12 know. I don't know.

13 Q. Now, was that particular item sent to any
14 lab for analysis?

15 A. No, it was not.

16 Q. Since you fellas didn't use a video
17 camera, did you at least have pictures taken as you
18 were removing items, so that we know in fact that you
19 found a particular item within the house in a
20 particular area?

21 A. The Teaneck Police Department did the
22 photographing of the house.

23 Q. Let's try it again?

24 MS. FRANZESE: Objection, your
25 Honor.

1 CROSS/Gabriele

2 THE COURT: Sustained.

3 Q. Okay. Can you instruct the witness to
4 answer my question?

5 THE COURT: If you would ask the
6 question again. If you would, thank you.

7 MR. KEAHON: Could I have it read
8 back, please.

9 THE COURT: Yes, certainly.

10 (Record read)

11 Q. Did you?

12 A. What do you mean by "you fellas", who are
13 you talking about? Me, or the Teaneck Police
14 Department?

15 Mr. Keahon, can I take these gloves off
16 now.

17 THE COURT: Yes.

18 MR. KEAHON: Yes.

19 Q. I meant generically, were there some
20 female police officers there?

21 A. I believe there was a female police
22 officers there.

23 Q. When I meant "you guys", I meant the men
24 and women who were executing the search warrant?

25 A. Yes.

1 CROSS/Gabriele

2 Q. Did anyone take pictures, as items were
3 being removed, to memorialize what it is you're
4 finding and where?

5 A. Yes.

6 Q. Did anyone take pictures of the paperwork
7 that was inside that bag you told us about, as -- as
8 the items were being removed?

9 A. No, we moved the bags all by themselves.
10 Just the photographs of the bags in the closet.

11 Q. My question again is, those bags, were
12 they taken back to the Teaneck Police Department?

13 A. No.

14 Q. They were given to you.

15 A. Yes.

16 Q. Did anyone go through them from Teaneck,
17 in the house?

18 A. No, they did not.

19 Q. So the only one that had knowledge or
20 claimed knowledge of what was in the bag, was you?

21 A. Yes.

22 Q. You take the bag and you go where?

23 A. Back to Suffolk County.

24 Q. When you go back to Suffolk County, where
25 do you go with the bag?

1 CROSS/Gabriele

2 A. Into our office in Yaphank.

3 Q. There were two bags, were there not?

4 A. I believe there were three bags.

5 Q. You brought all three bags?

6 A. Everything came back, yes.

7 Q. You go back to your office?

8 A. In Yaphank.

9 Q. In Yaphank, and that day you go through
10 the bags?

11 A. That night, we started to go through the
12 bags. There was a great deal of paperwork. It took
13 us more than one night to go through the bags.

14 Q. When you say "we went through the bags",
15 it is you and the other two fellas?

16 A. Myself and Det. Crane.

17 Q. Any notes, reports, from Det. Crane
18 claiming what he had done that night?

19 A. No, there is not.

20 Q. Next day?

21 A. No.

22 Q. Or any date thereafter?

23 A. Not from Crane, no.

24 Q. Was there any piece of paper or report
25 indicating that you found certain items in certain

1 CROSS/Gabriele

2 places and Crane signed off on it as witnessing?

3 A. No, there's not.

4 Q. The items of paperwork that were found in
5 the bag, you had mentioned some of them. Some of
6 them are in evidence. Was there any bit or any piece
7 of those papers that was sent to the lab for analysis
8 for fingerprints?

9 A. No, there wasn't.

10 Q. Were there any pieces of paper within that
11 bag or bags, that are in evidence now, that were sent
12 for handwriting comparison?

13 A. Yes.

14 Q. What?

15 A. I don't recall which bags were sent for
16 handwriting, I don't know.

17 MR. KEAHON: May he.

18 Q. We know 176-A and B were not, Kathleen
19 Reid?

20 A. That is correct.

21 Q. No fingerprinting or handwriting analysis?

22 A. That is correct.

23 Q. Okay. And we know --

24 MR. KEAHON: May I see 153, P and

25 Q?

1 CROSS/Gabriele

2 Q. We have 149, 148, 146, 145, 144, 143, 142,
3 141, 140, 139, 138, 137, 136 and 135, 134 and 133,
4 pictures that were taken at 92 Howland, right?

5 A. Correct.

6 Q. At some point during the time that you
7 were doing the search warrant, yes?

8 A. Yes.

9 Q. 148, and 149 are pictures that were taken
10 from inside the closet, of the bags, am I correct?

11 A. Yes, that is correct.

12 Q. There is nothing visible in those pictures
13 of an identifying nature of the items that have been
14 offered into evidence, here, are they?

15 A. In these particular pictures.

16 Q. Yes?

17 A. No, they're not.

18 Q. When you say "in these particular
19 pictures", am I correct that they're the only two --

20 A. Of the closet where the bags were removed
21 from.

22 Q. Yes?

23 A. Yes, that is correct.

24 Q. Are there any other pictures that were
25 taken by you fellows, back at Suffolk County Police

1 CROSS/Gabriele

2 Department, of the bags or their contents?

3 A. No, there was not.

4 Q. So those are the only two pictures that we
5 have?

6 A. That is correct.

7 Q. 166, is a card with a picture of Desmond
8 DeFreitas on it, am I right? I show you People's
9 166. What date would that have been?

10 A. Approximately two weeks after the search
11 warrant in August of 2005.

12 Q. I think I asked you, did you take a
13 statement from him?

14 A. No, I did not.

15 Q. Are there any notes of your conversation
16 with him?

17 A. No, there is not.

18 Q. Was it an in-person interview?

19 A. No, it was on the phone.

20 Q. Did you tape record that conversation you
21 had with him?

22 A. No, I did not.

23 MR. KEAHON: May I see that item,
24 please.

25 Q. Desmond DeFreitas, at the time you did a

1 CROSS/Gabriele
2 search warrant of Nigel DeFreitas in Desmond's house,
3 Desmond was living upstairs?

4 A. Correct.

5 Q. I see.

6 MR. KEAHON: Could I just show this
7 to the jury real quick, judge.

8 THE COURT: Would you like to
9 publish it with the presenter or physically
10 publish it.

11 MR. KEAHON: I'll just show them
12 real quick.

13 Q. Had you searched the vehicle, I think you
14 said you did that on the 25th of January of 2006?

15 A. Correct.

16 Q. Excuse me. My client was arrested?

17 A. Yes, he was.

18 Q. Two days later, on the 27th? You do the
19 search warrant at 92 Howland?

20 A. Yes.

21 Q. At the house?

22 A. Yes.

23 Q. My client's in custody?

24 A. Yes, he is.

25 Q. When you hit the house and do the search

1 CROSS/Gabriele

2 warrant, nobody's there?

3 A. No one is there, no.

4 Q. Nobody is there the entire time that you
5 fellas are there?

6 A. No.

7 Q. You're the only ones that have custody and
8 control of that house.

9 A. Correct.

10 Q. The items that you took from the vehicle,
11 what did you do with them?

12 A. Some of the items were kept in the office.
13 Some of the paperwork. Other items were -- were put
14 into property.

15 Q. When you say "some of the items were kept
16 in the office", where in your office?

17 A. We have a secure location in our office, a
18 property locker. As we would go through the items,
19 we would put stuff into notebooks in order to present
20 it to the district attorney.

21 Q. How long did it stay in the office, not in
22 property?

23 A. It stayed in the office for quite some
24 time but not in property. I can't give you an exact,
25 exact amount of time.

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2 Q. So there is a property girl within the
3 Suffolk County Police Department?

4 A. Yes.

5 Q. You're supposed to log in evidence there,
6 right?

7 A. I can't answer that, "supposed to". It
8 depends on the situation. In a situation like this,
9 we kept the paperwork out because we had to go
10 through the paperwork in order to match it up to the
11 particular fraud cases.

12 Q. How many months did you keep it within
13 your office not in property?

14 A. I would have to go to the property section
15 and get the documents from them.

16 Q. Well, did you then submit to property, on
17 the 25th or 26th of January of 2006, other items, to
18 property?

19 A. No.

20 Q. So nothing was submitted to property?

21 A. No.

22 Q. Everything was just kept up in your
23 office?

24 A. Everything was kept up in the office. It
25 was an ongoing investigation which requires us to

1 CROSS/Gabriele

2 continue to go through the paperwork.

3 Q. Did you keep some of that paperwork in
4 your case folder?

5 A. Some of the paperwork in my case folder.

6 Q. Yes?

7 A. I explained to you we're making binders up
8 with specific evidence that was germane to the case,
9 yes.

10 Q. So that would be in your case folder?

11 A. Or in a binder, yes.

12 Q. When you did the search of the vehicle,
13 did you find a Bible in it?

14 A. Yes.

15 Q. Where was that?

16 A. It was in the vehicle.

17 Q. Where?

18 A. I don't know specifically where.

19 Q. Did it have a name inside the Bible?

20 A. I don't recall.

21 Q. Well, when you -- you testified on direct
22 examination in front of this jury, you told everybody
23 about the items you found in the vehicle.

24 A. Correct.

25 Q. I didn't hear you mention the bible?

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2 MR. PEARL: Objection, judge.

3 THE COURT: Sustained. Rephrase,
4 Mr. Keahon.

5 MR. KEAHON: Yes.

6 Q. Did you indicate on direct that you found
7 a bible in the car?

8 A. I don't believe I did, no.

9 Q. You submitted some items to property on
10 March 31st of 2006, right?

11 A. I would have to look at it to see
12 what -- what you're speaking of, Mr. Keahon.

13 Q. You indicated a sealed box containing one
14 green bomber jacket, one laptop case, one book, one
15 bible with a case, and assorted papers, right?

16 A. That's the property receipt, yes.

17 MR. KEAHON: Do you want to take a
18 look?

19 May I have this marked for
20 identification, please.

21 THE COURT: Yes, officer, if you
22 would, please.

23 THE COURT OFFICER: Defendant's
24 Exhibit M, marked for identification only.

25 (Defendant's Exhibit M, marked for

1 CROSS/Gabriele

2 identification)

3 Q. Officer, take a look at Defendant's
4 Exhibit M for identification, and tell me if you can
5 identify it?

6 A. Yes, this is a property receipt.

7 Q. Is that for all the items that you took
8 out of the car?

9 A. No, it's not.

10 Q. Is there another property receipt?

11 A. Aside from this?

12 A. Yes.

13 Q. Yes?

14 A. Pertaining to the items taken from the car
15 if I'm understanding correctly.

16 Q. Yeah?

17 A. No, there's not.

18 Q. So this is the only property
19 receipt -- indicating what was invoiced with
20 property?

21 A. No, there is a number of them but on this
22 particular date --

23 THE WITNESS: I'm not sure I
24 understand what you're asking.

25 MR. KEAHON: I probably asked a

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2 confusing question.

3 Q. Were there a number of dates that you took
4 items, that you took from the car, to property?

5 A. There may be. I'd have to look.

6 Q. Are you aware of whether or not there is
7 any other document that indicates an inventory of
8 property from the car, other than Defendant's M?

9 A. Not right now, no.

10 MR. KEAHON: May I see that,
11 please?

12 Q. I'm correct, am I not, sir, that you
13 submitted a sealed box containing one green bomber
14 jacket?

15 A. If that is what it says on that, correct?

16 Q. One laptop case?

17 A. Yes.

18 Q. One book?

19 A. Yes.

20 Q. One bible with a case and assorted papers?

21 A. Correct.

22 Q. This computer that you took out of 92
23 Howland, did you attempt to determine who the owner
24 of that computer was?

25 A. I forwarded the computer to computer

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2 crimes but, yes, I did attempt to find out who the
3 owner of the computer was.

4 Q. Did you attempt to find out when that
5 computer was first made?

6 A. Yes, I did.

7 Q. Did you attempt to determine when that
8 computer first hit the United States?

9 A. Yes, I did.

10 Q. Was that at my request?

11 A. Yes, it was.

12 Q. Now, did you find out that the computer
13 was a Gateway laptop?

14 A. Yes.

15 Q. Did you learn at some point through your
16 investigation that the computer was shipped to a
17 retail store in December of 2004?

18 A. If you do not oppose, I could look back at
19 those notes.

20 Q. Sure, I have no problem.

21 A. If you could reask the question so I can
22 make sure I could answer what you're asking.

23 MR. KEAHON: Sure.

24 Q. Am I correct that you determined that,
25 through your investigation, that the computer was

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2 shipped to a retail store in December of 2004?

3 A. According to the notes, I spoke with
4 someone from Gateway and they told me that that
5 particular computer was sold in a retail store,
6 between January and March of 2005.

7 Q. I'll get to that. I'm looking at the
8 first page of your notes.

9 A. Okay.

10 Q. The last sentence in that first paragraph?

11 A. Yes, that was my initial contact with
12 Gateway. We shipped to a retail store in December of
13 2004.

14 Q. When is the first time you made an effort
15 to find out the origin of that Gateway computer?

16 A. When you asked us for it.

17 Q. And that would be February 15th of 2008?

18 A. Correct.

19 Q. We were already on trial at that point?

20 A. That is correct.

21 Q. You hadn't tried prior to that date to
22 determine when that computer hit the states?

23 A. No, I didn't.

24 Q. Did you learn that the hard drive was sold
25 to Arimna (ph) Computer Systems, on September 19th,

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2 2004?

3 A. That is correct.

4 Q. Did you also find out that after the hard
5 drive in question was purchased on November 19th of
6 2004, the hard drive was shipped to China?

7 A. Yes, that is correct.

8 Q. Where it was assembled and fit into a
9 Gateway laptop?

10 A. Yes.

11 Q. Then it was shipped back to the United
12 States, in December of 2004?

13 A. That is correct.

14 Q. So at the time that Ms. Macarle and Brian
15 Smith and Mike Nolan and Joseph Sweeney and Eric
16 Besso, Kathleen March, and Briton Lawler and Brian
17 and Brenda Foley, and Gloria Conaty and Gerald
18 Thurman and Thomas Palladino, and the Sperl's and Mr.
19 Wojcieh Wachnik, at the time these people were
20 filling out their credit reports, this computer that
21 you found at 92 Howland, hadn't even been put
22 together yet, right?

23 A. Let me make sure I have -- what you're
24 asking me is clear. When they're filling out their
25 credit applications at Baron Honda.

1 CROSS/Gabriele

2 Q. Yes?

3 A. Okay. When they are filling out their
4 credit applications at Baron Honda?

5 Q. Yes?

6 A. This computer had not been assembled yet,
7 no.

8 Q. Okay. Some of the alleged frauds, and the
9 paperwork connected with it, that are in this case,
10 were prior to December 29th of 2004, yes?

11 A. That is correct, yes.

12 Q. So the computer that you took out of 92,
13 certainly wasn't used for those frauds.

14 A. It wasn't assembled, Mr. Keahon. It
15 wasn't used, no, is that correct.

16 Q. Thank you. That might be something
17 important for the jury to know, wouldn't it?

18 MR. PEARL: Objection, judge.

19 THE COURT: Sustained. Don't
20 answer the question.

21 Q. You also said something to Det. John
22 Freiberg, who is going to be our last witness, right?

23 A. Correct.

24 Q. He's waiting out in the hall?

25 A. If he's still there. He might not be

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2 there.

3 Q. He indicated to you that the Microsoft
4 Windows was installed on this unit, this computer
5 that was taken out of 92 Howland Avenue, Teaneck, New
6 Jersey, that was installed on 12/29/04?

7 A. Yes. That's correct.

8 Q. And then, you tried to -- you spoke with a
9 Shane Curtis, of Gateway corporate offices, who told
10 you that the computer bearing the serial number that
11 we've talked about and shown up on the screen, was
12 sold in a retail store between January and March of
13 2005?

14 A. Correct.

15 Q. Between January and March of 2005?

16 A. Yes, that is correct.

17 Q. And were they able to tell you where it
18 was sold?

19 A. No, they were not.

20 Q. Were they able to tell you who it was sold
21 to?

22 A. No, they were not.

23 Q. Did you inquire of them whether or not
24 they kept a record of the serial number of the
25 computer and whether or not a retail store or their

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2 records would show who they sold it to?

3 A. Gateway indicated to me, depending on the
4 first few numbers of the serial number, the only
5 thing they are able to tell us was that it was
6 shipped to a retail store. If it was a different
7 type of serial number, they would have been able to
8 tell us it was shipped from Gateway itself.

9 Q. How is it, did they explain to you that
10 they chose the dates between -- when it was sold in a
11 retail store, between January and March of 2005?

12 A. That was what the technician from the
13 Gateway corporate offices told me.

14 Q. Did you ask them how it is they were able
15 to come up with it?

16 A. By the serial number, is what he
17 indicated.

18 Q. If it was sold in a retail store as early
19 as January of 2005, and as late as March of 2005?

20 A. According to what Mr. Curtis told me, yes.

21 Q. I think you indicated you did this
22 research because I requested it for court?

23 A. That is correct.

24 Q. Had anyone else from the district
25 attorney's office asked you to research that?

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2 A. No.

3 Q. From the time this case originated until
4 sometime during this trial, when I made the request,
5 no assistant district attorney asked you to determine
6 that information?

7 A. No.

8 MR. KEAHON: May I see 171.

9 Q. I'm showing you People's 171, detective.
10 It is a piece of paper. I'm going to hold it up to
11 the jury for you. Is the name David Ridenour on it?

12 A. (Nods)

13 Q. Where is it you say you found this?

14 A. In the hallway closet.

15 Q. In what?

16 A. In one of the bags.

17 Q. Okay. Was this sent to handwriting for an
18 analysis?

19 A. No, it was not.

20 Q. Was this -- was there anything about the
21 paperwork that made you feel that they couldn't do a
22 handwriting analysis?

23 A. No, there wasn't.

24 Q. Was this sent to fingerprint analysis?

25 A. No, it wasn't.

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2 Q. Is there anything about this document that
3 made you think that it might not be amenable to
4 fingerprint analysis?

5 A. No.

6 Q. Who was with you when you found that?

7 A. That particular item.

8 Q. Yes?

9 A. It was in my office. I can't give you the
10 exact detective who was there when we found it.

11 Q. Who was the individual that was with you
12 when you found -- Ms. Ghassabian, Rhonda Ghassabian?

13 A. Det. Crane.

14 Q. Does he have a note or a report that
15 indicates that he sees you find that?

16 A. No, he does not.

17 MR. KEAHON: 172, please.

18 Q. This card that says Master Sensei Martin
19 on it, and it has a long number on it? And above
20 it -- well, it has "W.B.A.", and then a number of
21 letters.

22 Where was this found?

23 A. I believe that was found in 92 Howland in
24 Teaneck, New Jersey.

25 Q. Allegedly in one of those bags?

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2 A. Correct.

3 Q. Who was with you when you found this?

4 A. I don't remember who was with me when I
5 actually pulled it out of the bag.

6 Q. Was this ever catalogued into property if
7 it ever was?

8 A. It was not. It was ceased as evidence.

9 Q. I see. Did I ask you who was with you
10 when you found this?

11 A. Yes, you did.

12 Q. Okay. Was this sent for handwriting or
13 fingerprinting?

14 A. No, it was not.

15 Q. Was there anything about the document
16 itself that led you to believe that a fingerprint
17 analysis could not be done or a handwriting analysis
18 could not be done?

19 A. No, there is not.

20 Q. So I guess it -- so it is you that made
21 the determination as to what you wanted to send for
22 fingerprinting, right?

23 MR. PEARL: Objection.

24 THE COURT: Overruled.

25 THE COURT: You can answer the

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2 question.

3 A. Yes, that is correct.

4 Q. And it is you that made the decision as to
5 what you wanted to send for handwriting analysis.

6 A. That is correct.

7 Q. And it is only you that has an awareness
8 of what you claim where documents were found?

9 A. That's correct.

10 Q. When you went in the house at 92 Howland
11 with the search warrant, was the computer on or off?

12 A. The computer was plugged in and the screen
13 was not lit up. So I'm assuming it was off.

14 MR. KEAHON: May I see 110, 111 and
15 112, please?

16 Q. People's 110 is a Department of
17 Transportation check for \$64.50?

18 A. Yes, sir, it is.

19 Q. With the name Briton Lawler?

20 A. Yes.

21 Q. Signed?

22 A. Yes.

23 Q. This check, Briton Lawler is a victim in
24 this case.

25 A. Yes, he is.

1 CROSS/Gabriele

2 Q. This check was found where?

3 A. That check, was recovered from Smithtown
4 Land Rover.

5 Q. And you asked that this check be analyzed
6 for a fingerprint?

7 A. Det. Peeker sent that up for fingerprint
8 analysis, yes.

9 Q. Det. Peeker?

10 A. Peeker.

11 Q. Not yourself?

12 A. No, not myself.

13 Q. And Kylie Copeland's fingerprint came back
14 to this check?

15 A. Yes, it did.

16 Q. And Kylie Copeland was arrested and
17 convicted.

18 A. Yes, he was.

19 Q. And this check was dated 10/6/04?

20 A. If that is what you're telling me the date
21 is, yes.

22 Q. Did you ever get handwriting exemplars of
23 Kylie Copeland?

24 A. No, I did not.

25 Q. Did Det. Peeker ever get handwriting

1 CROSS/Gabriele

2 exemplars of Kylie Copeland, to determine if in fact
3 he wrote out what is on this check?

4 A. No, he did not.

5 Q. Did you ever get handwriting exemplars
6 from Nigel DeFreitas?

7 A. No, I did not.

8 Q. Desmond DeFreitas?

9 A. No.

10 Q. Did you ever ask them for their
11 fingerprints?

12 A. No, I did not.

13 Q. So 110, Exhibit 110, has Kylie Copeland's
14 fingerprint on it, he was prosecuted for the
15 Smithtown case?

16 A. Land Rover, correct.

17 Q. Right? In the Fall of 2004?

18 A. Yes.

19 Q. And no one asked him for his handwriting
20 exemplars?

21 A. Not at the time, no.

22 Q. Well, never?

23 A. Never. Correct, yes.

24 Q. You testified to the jury that on January
25 24th of 2006, you were doing a surveillance of 92

1 CROSS/Gabriele

2 Howland, and that you followed my client's car?

3 A. That's correct.

4 Q. You said it was his car? The car he was
5 in?

6 A. The car he was in.

7 Q. Yes?

8 A. Yes.

9 Q. You testified that he stopped in the
10 middle of the road, abandoned the vehicle and walked
11 away?

12 A. That's correct.

13 Q. Where did he go?

14 A. He walked up the street to the gas station
15 on the corner.

16 Q. Did he run out of gas?

17 A. I don't know. We moved away from where
18 the car was.

19 Q. Well, when you, you testified in front of
20 the jury, it sounded like --

21 MR. PEARL: Objection. I'm sorry,
22 judge, it sounds like it's improper right at
23 the start.

24 THE COURT: Let your colleague
25 finish phrasing the question.

1 CROSS/Gabriele

2 Mr. Keahon?

3 Q. Did you testify, sir, in front of the
4 jury, that you were telling him on the 24th you saw
5 the vehicle stop in the middle of the road, he got
6 out of the car and walked away?

7 A. I'd have to go back to the minutes. I
8 don't believe I said we were following him. We were
9 sitting at a location surveiling him. We watched him
10 pull out of the driveway, pull down the block, stop
11 the car and get out of the car.

12 Q. I'm talking about when you testified in
13 front of the jury.

14 A. Yes. Correct.

15 Q. A-ha? Did you see him get a gas can out
16 of the car?

17 A. When he stopped the car, we moved to a
18 safe location. We didn't want anybody to see that we
19 were surveiling the vehicle.

20 Q. Did it appear that the vehicle ran out of
21 gas?

22 A. That is what we thought at the time, yes.

23 Q. So it wasn't some surreptitious, he spots
24 you, he's going to abandon the car and dodge into a
25 gas station?

1 CROSS/Gabriele

2 A. At the date and time we were there, we
3 weren't sure.

4 Q. Well, do you recall giving testimony at
5 Page 115, Line 8, "The vehicle drove down the road.
6 It appeared the vehicle ran out of gas"?

7 A. Which, which hearing was this?

8 That is what we believed it was, that it
9 appeared that it ran out of gas. He just got out of
10 the car and walked away.

11 MR. KEAHON: Okay.

12 Q. Well, one of the pictures of the vehicle
13 showed a gas can, a red gas can in the trunk, didn't
14 it?

15 A. Correct.

16 Q. Okay. You indicated -- I talked to you
17 about the cell phones that were taken out of the
18 vehicle. How many cell phones were taken out of the
19 house?

20 A. Three.

21 Q. And were they sent for analysis on prints?

22 A. No, they were not.

23 Q. You indicated that a Kwik Digital card,
24 People's 95, was found somewhere in the house?

25 A. Correct.

1 CROSS/Gabriele

2 Q. Where was that found?

3 A. In the bags.

4 Q. No prints, no nothing on that?

5 A. We did not send it up for analysis, no.

6 Q. You're the one that claims you found it?

7 A. Yes.

8 Q. Is there any note or report from any other
9 detective that you worked with, that supports you
10 finding any particular item in any particular
11 location?

12 A. No. It was my case.

13 Q. So if the guys just -- they work with you,
14 but they don't make notes or reports on what they do?

15 A. Not in this case, no. There wasn't a need
16 for it, a necessity for any notes from anyone else.

17 Q. So it is like they never even worked that
18 day?

19 MR. PEARL: Objection.

20 THE COURT: Sustained.

21 Q. Well, they have no reports, no notes of
22 what they did. You're the fellow that's doing it.
23 You don't have any notes or reports of what you
24 found. So how does anybody know what anybody was
25 doing?

1 CROSS/Gabriele

2 MR. PEARL: Objection.

3 THE COURT: Sustained.

4 MR. KEAHON: Could I see People's
5 49, please?

6 Q. People's 49, tell me whether or not you
7 can -- can you make out what this is?

8 A. If you move it a little bit over. The
9 other way. Yeah. So I can --

10 MR. KEAHON: Let me do it quick.
11 Can I hand it up.

12 THE WITNESS: That's fine.

13 Q. You take a look, and I'll ask you what it
14 is, and we can go from there.

15 A. It's the title page of the phone records
16 for the phone taken out in the name of Wojcieh
17 Wachnik.

18 Q. And what is the phone number?

19 A. --

20 Q. I'll get to that.

21 That is the Wojcieh Wachnik?

22 A. That is the title page for the account
23 Wojcieh Wachnik.

24 MR. KEAHON: Easy for you.

25 THE WITNESS: Exactly.

1 CROSS/Gabriele

2 Q. This is a Sprint-Nextel phone?

3 A. It is a Sprint phone.

4 Q. Sprint phone. You see down in the bottom
5 it has the numbers?

6 A. Left-hand corner.

7 Q. Yeah, it says below it, "view/change
8 customer"?

9 A. Yes.

10 Q. "View/change customer"?

11 A. Yes.

12 Q. Does that mean the customer can go on and
13 change those numbers?

14 MR. PEARL: Objection, judge.

15 THE COURT: Overruled. If the
16 witness knows.

17 A. I would have no idea. That is something
18 you have to ask the Sprint-Nextel people.

19 Q. If somebody has Sprint, can't they go on
20 at any time and change the address, which is above
21 it?

22 MR. PEARL: Objection.

23 THE COURT: Sustained. It's a
24 question of competence, Mr. Keahon, or lay a
25 foundation in your cross.

1 CROSS/Gabriele

2 Q. Do you have a cell phone?

3 A. Yes, I do.

4 Q. Who is your carrier?

5 A. AT&T, Cingular AT&T.

6 Q. Do you have the ability to go on the
7 computer and change the address you want --

8 MR. PEARL: Objection -- sorry.

9 Q. -- you want the bill to be sent to?

10 MR. PEARL: Objection.

11 THE COURT: Overruled.

12 A. I've never done it. I don't know. I have
13 no idea.

14 Q. Or even to change the number if you
15 choose?

16 A. Never done it. I have no idea, sir.

17 Q. Are you able to see this on Page 2? See
18 the M.S.I.D. number?

19 A. Correct.

20 Q. What is that?

21 A. I don't know.

22 Q. Isn't that an internal tracking number for
23 the subscriber?

24 A. It very well may be, Mr. Keahon. I do not
25 have the technical knowledge of Sprint-Nextel's

1 CROSS/Gabriele

2 bills.

3 Q. Well, it has two numbers there. You see?

4 A. Correct.

5 Q. It has two M.S.I.D. numbers, and then it
6 has two telephone numbers?

7 A. Correct.

8 Q. What are those two telephone numbers?

9 MR. PEARL: Objection.

10 THE COURT: Overruled. If the
11 witness knows.

12 A. They're two numbers under the same
13 account.

14 Q. So there is two separate phones --

15 MR. PEARL: Objection.

16 THE COURT: Overruled.

17 A. That, I don't know.

18 Q. Well, if you have two numbers for the same
19 account, you have to have two different phones, don't
20 you?

21 MR. PEARL: Objection.

22 THE COURT: Again, it is a matter
23 of if the witness knows.

24 A. I don't know for a fact. I would assume
25 so. I don't know for a fact.

1 CROSS/Gabriele

2 THE COURT: Don't speculate.

3 A. I don't know for a fact, Mr. Keahon.

4 Q. Do you know of any phone that you can
5 call, on two different numbers, and the person will
6 pick up?

7 MR. PEARL: Objection.

8 THE COURT: Sustained.

9 Q. When you looked at this record, did you
10 look at it with the district attorney?

11 A. This particular record.

12 Q. Yes?

13 A. I looked at it with my -- by myself, when
14 I got the subpoenaed records in.

15 Q. How many hours would you say you spent
16 with this assistant district attorney in preparation
17 for your testimony and the presentation of this case?

18 A. Many, many hours.

19 Q. Hundreds and hundreds and hundreds?

20 A. I won't say hundreds, but many, many
21 hours.

22 Q. If you retired today, based upon the last
23 two years that you have been on this case, we would
24 see your name in the picture --

25 MR. PEARL: Objection, judge.

1 CROSS/Gabriele

2 THE COURT: Sustained.

3 Q. Did you keep a record of how many hours
4 you --

5 A. No, Mr. Keahon.

6 Q. -- spent out on this case?

7 A. No, Mr. Keahon, I did not.

8 MR. KEAHON: But you will.

9 Q. How much time did you spend on this
10 record, on this Wojcieh Wachnik record, with the
11 district attorney?

12 A. The Wojcieh Wachnik records, I spent.

13 MR. KEAHON: It is so late, we're
14 not being impolite to his name.

15 THE COURT: "Wojcieh Vachnik", it
16 is a "V".

17 The "W" is pronounced as a "V" in
18 Polish.

19 Q. How much time, sir, did you spend on this
20 record? With the district attorney, trying to
21 figure out what this stuff means?

22 A. A minimal amount of time with the district
23 attorney, figuring out what that means.

24 Q. Didn't you testify to an electronic serial
25 number?

1 CROSS/Gabriele

2 A. Yes.

3 Q. And it had to do with this account?

4 A. That is correct.

5 Q. I think you testified, sir, that the two
6 numbers that we see, here, under M.S.I.D., are
7 internal tracking numbers of the subscriber, right?

8 A. I don't believe ---

9 MR. PEARL: Objection, judge. That
10 wasn't his testimony, judge.

11 THE COURT: Sustained.

12 Q. Well, next to the first number, it says
13 "authorized user", "Wojcieh Wachnik", "effective date
14 10/14/2004", right?

15 A. That is correct.

16 Q. "Expiration date", "11/03/04", correct?

17 A. Yes.

18 Q. "Subscription I.D." --

19 MR. KEAHON: I'm sorry.

20 A JUROR: Thank you.

21 Q. "Subscription i.d.," it has a number
22 "0533745505", right?

23 A. Correct.

24 Q. Below that, it has another subscription
25 i.d., "0534821298", right?

1 CROSS/Gabriele

2 A. Correct.

3 Q. Two phones.

4 A. Apparently so, yes.

5 MR. PEARL: Objection.

6 Withdrawn, judge.

7 THE COURT: Thank you.

8 Q. You gave testimony as to only one ESN
9 number, right?

10 A. That is correct, yes.

11 Q. What is the electronic serial number
12 number for the other phone?

13 A. Well, if I had the other phone, I could
14 tell you what it was. I don't have the other phone.

15 Q. So there is another phone, you don't have
16 it, and we don't have that electronic serial number
17 number, right?

18 MR. PEARL: Objection, judge.

19 THE COURT: Sustained. Form.

20 Rephrase, Mr. Keahon.

21 Q. You told us that you do agree there was
22 another phone?

23 MR. PEARL: Objection, judge.

24 THE COURT: Sustained, form.

25 Rephrase, Mr. Keahon.

1 CROSS/Gabriele

2 Q. Was it your testimony that you agree now
3 that there was a second phone --

4 MR. PEARL: Objection.

5 THE COURT: Overruled.

6 A. It appears that there are two phones on
7 the account, yes.

8 Q. Okay. Is this the first time you realized
9 that?

10 A. No, it is not.

11 Q. When did you first realize that?

12 A. When I first got the records.

13 Q. Did you have any discussions with the
14 district attorney about them being two phones, two
15 different i.d. numbers, two different electronic
16 serial numbers?

17 A. I don't recall any particular conversation
18 to that effect, no.

19 Q. Did you have a discussion with the
20 district attorney that you would only present to this
21 jury, one phone, one identification number, and one
22 ESN number?

23 MR. PEARL: Objection, judge.

24 THE COURT: Sustained.

25 Q. Did you have a discussion with the

1 CROSS/Gabriele

2 district attorney's office, before you testified,
3 that the question and answer would only involve one
4 phone, and one ESN number?

5 A. No.

6 Q. Well, at the day's completion, when you
7 testified about one phone, one ESN number, one i.d.
8 number, did you say to Mr. Pearl, "You forgot the
9 second one"?

10 MR. PEARL: Objection.

11 Q. "Maybe we should tell the jury about that
12 one"?

13 MR. PEARL: Judge, objection.

14 THE COURT: Sustained.

15 Q. Did you receive these records from Sprint?

16 A. Yes, I did.

17 Q. Was there a cover page addressed to Mr.
18 Pearl?

19 A. Yes, there was.

20 Q. And that is not part of this exhibit, is
21 it?

22 A. I don't -- I don't know what you're
23 showing me.

24 Q. I'll show it to you.

25 THE COURT: Officer, if you would.

1 CROSS/Gabriele

2 THE COURT OFFICER: Exhibit 49.

3 THE COURT: Thank you, officer.

4 A. Your question, Mr. Keahon. What is the
5 question you asked me?

6 Q. Was there a cover page with the -- a
7 two-page cover page, sent with the subpoenaed
8 documents?

9 A. This particular document.

10 A. This particular document is from 2007. So
11 there is no cover page with this, what you've just
12 given me.

13 Q. But you did see one, did you not?

14 A. There usually is one, yes, when it comes
15 from Sprint.

16 Q. Did you receive with any records, a letter
17 addressed to Mr. Pearl, that gives two different
18 electronic serial numbers -- what is an ESN again?

19 A. I believe, I'm not sure, it is electronic
20 serial number.

21 Q. We talked about what M.S.I.D. is?

22 A. I have no idea what that is. Some kind of
23 internal identifier.

24 Q. Yes. Okay. And we talked about the two
25 different numbers, on the record, right?

1 CROSS/Gabriele

2 A. Correct.

3 Q. What was the electronic serial number you
4 testified referenced one of the phones, as to Mr.
5 Wojcieh Wachnik?

6 A. I'd have to look at the document to tell
7 you what the electronic serial number was.

8 Q. Would you?

9 A. Would I what?

10 Q. Is it on that record?

11 A. I'd have to look.

12 (Pause)

13 A. No, it's not.

14 MR. KEAHON: May I have this marked
15 for identification, please?

16 THE COURT: Yes.

17 MR. KEAHON: Oh, it's 177.

18 Thank you very much, Mr. Pearl.

19 THE COURT: Do you need that
20 marked, then?

21 MR. KEAHON: I may not.

22 THE COURT: Thank you.

23 Q. Would you please look at 177?

24 (Hanging)

25 Q. Please tell us what the electronic serial

1 CROSS/Gabriele

2 number is?

3 A. 75CD623.

4 Q. On Exhibit 177? I ask you to look at what
5 is being marked as Defendant's "N", as in "Nancy".
6 N, for Nancy. The fifth page, I think.

7 THE COURT OFFICER: Defendant's
8 Exhibit N, marked for identification only.

9 (Defendant's Exhibit N, marked for
10 identification)

11 Q. I think it is Page 5, sir, either Page 4
12 or Page 5. It is with a listed electronic serial
13 number.

14 MR. KEAHON: May I approach, judge,
15 to make this go quicker.

16 THE COURT: Yes.

17 Q. The page before Page 4, do you see a
18 letter addressed to Mr. Pearl?

19 A. Yes, I do.

20 Q. Do you see that letter?

21 A. I don't recall. I don't recall seeing
22 this, no.

23 Q. What is the date?

24 MR. PEARL: Objection.

25 THE COURT: Sustained. It is not

1 CROSS/Gabriele

2 in evidence, Mr. Keahon.

3 Q. Have you, on the records for Mr. Wachnik,
4 in addition to what we've talked about and what is
5 shown on the display, have you seen a record not only
6 with two different M.S.I.D. numbers, and two
7 different phone numbers, but also two different
8 electronic serial numbers?

9 MR. PEARL: Objection, judge.

10 THE COURT: Overruled.

11 A. I'm not sure I understand the question,
12 Mr. Keahon.

13 Q. Okay. On People's 49, we talked about Mr.
14 Wachnik's Sprint records?

15 A. Correct.

16 Q. We talked about the two different M.S.I.D.
17 numbers.

18 A. (Nods)

19 Q. We talked about the two different phone
20 numbers?

21 A. (Nods)

22 Q. We talked about that apparently being two
23 different phones?

24 A. Correct.

25 Q. You've given testimony as to only one.

1 CROSS/Gabriele

2 A. I only physically had one. That's all I
3 know about.

4 Q. Okay. But you had the records, knowing
5 there was a second one?

6 MR. PEARL: Objection, judge.

7 THE COURT: Overruled.

8 A. The call records, is that what you're
9 referring to -- or the subscriber record.

10 Q. I'm talking about 49, where we saw in 49?

11 A. Correct, yes.

12 Q. There were two numbers, two phones?

13 A. Yes.

14 Q. You never testified on direct about a
15 second phone, did you?

16 A. There was only one phone germane to the
17 case.

18 Q. Sir, in your testimony, it was never even
19 discussed with you in front of this jury about two
20 phones, two different numbers, was it?

21 MR. PEARL: Judge, objection.

22 THE COURT: See counsel at side
23 bar, please.

24 MR. KEAHON: I'll withdraw.

25 THE COURT: Thank you.

1 CROSS/Gabriele

2 Q. Sir, am I correct that during your direct
3 examination, you spoke only as to one phone, one
4 number, notwithstanding what was in the records of
5 49, right?

6 A. That is what I was asked, yes.

7 Q. That is what you were asked by this
8 district attorney, right?

9 A. That is correct, yes.

10 Q. Now I'm asking you on that Page 4 and Page
11 5, you see a letter addressed to Mr. Pearl?

12 A. That is correct.

13 Q. From Sprint?

14 A. Yes.

15 Q. Have you seen that two-page document
16 before?

17 A. I told you before, Mr. Keahon, I don't
18 recall seeing this particular --

19 MR. KEAHON: Can we approach,
20 judge? And could I have that document?
21 (The following occurred at side
22 bar):

23 MR. KEAHON: I don't know how I got
24 this. I don't know when you give it to me.

25 MR. PEARL: Of course I did. I

1 CROSS/Gabriele

2 turned everything over.

3 MR. KEAHON: This talks about the
4 dates which we've heard.

5 The second page talks about that's
6 the number you had testified to. There is a
7 second electronic serial number assigned for a
8 second phone.

9 MR. PEARL: I turned that over
10 twice to you, to look at the dates. The dates
11 are outside the Wojcieh Wachnik dates, that's
12 why it wasn't put into evidence. It wasn't
13 relevant. I would have introduced it, but it
14 has no relevance to the case, 10/14 to 10/25.
15 Those are the records that are in evidence as
16 49.

17 MR. KEAHON: But there was other
18 things happening on Wojcieh Wachnik beyond
19 that date.

20 MR. PEARL: No, there wasn't.

21 MR. KEAHON: Yes, there was.

22 MR. PEARL: It goes to another
23 person.

24 MR. KEAHON: No, that is in
25 January.

1 CROSS/Gabriele

2 MR. PEARL: This is a different
3 time frame on the records. The records we put
4 into evidence were germane from the 10/14 to
5 the 10/25 date. But activity with the Wojcieh
6 Wachnik went beyond that date.

7 THE COURT: The court may assist
8 you. Either you cross-examine him, or I'll
9 cross-examine him. I'm allowing
10 cross-examination as to it. I'm sustaining
11 certain objections as to form.

12 He made motion for a mistrial
13 before, based on Mr. Pearl's comments. Upon
14 consideration, I'm going to deny the
15 application. I'll give a cautionary
16 instruction to the jury.

17 First, on the fact that the -- I
18 have -- you'll recall that the defendant's --
19 that the people made a remark in your
20 presence, and the defendant was trying on a
21 jacket to the extent of wishing to
22 cross-examine the defendant, because he would
23 be testifying. Such a remark is contrary to
24 law, I'm strongly emphasizing this to you,
25 trying on a jacket is not testimony. It is a

1 CROSS/Gabriele

2 demonstration for your consideration. To call
3 it testimony is not credible and must not be
4 considered as such by you. As I have charged
5 you, well into the future and now, the
6 decision not to testify by the defendant in a
7 trial is not a decision that you -- is not a
8 factor you can hold against the defendant.
9 You must disregard the comment by the
10 prosecutor.

11 MR. KEAHON: Can I let you know
12 tomorrow.

13 THE COURT: Yes.

14 MR. PEARL: For the record, he did
15 ask questions whether the defendant was
16 wearing the jacket.

17 THE COURT: But not of his client.

18 It is parsing whether a witness
19 puts on a jacket. Demonstrations are an
20 arcane area of law. The only reason I know it
21 was done at a trial --

22 MR. PEARL: I understand.

23 THE COURT: -- is where there is a
24 logical extension of testimony, and it's
25 treated entirely differently by the courts.

1 CROSS/Gabriele

2 So anyway.

3 Can we finish him up?

4 MR. KEAHON: I'm almost finished.

5 MR. PEARL: I'll finish.

6 THE COURT: Let's finish him.

7 We'll take a brief recess.

8 MR. KEAHON: Your Honor, we may be
9 able to finish this witness, both myself and
10 Mr. Pearl, by the 6:00 o'clock hour.

11 (The following occurred in open
12 court):

13 THE COURT: The jury will be given
14 a brief recess. Remember my admonitions.

15 I remind you not to form or express
16 an opinion about the case until submitted to
17 you for deliberations. As I've told you, do
18 not discuss this case or any matter connected
19 to the trial amongst yourselves or with anyone
20 else. Nor may you allow it to be discussed in
21 your presence.

22 Don't read or listen to accounts
23 reported in the news media, don't visit or
24 view the place or places where the offense
25 charged was allegedly committed or any other

1 CROSS/Gabriele

2 place involved in this case, and promptly
3 report to the court by way of coming to me
4 personally, through a court officer, any
5 incident within your knowledge involving any
6 attempt to influence any member of the jury.

7 THE COURT: You may stand down,
8 detective. Do not discuss your testimony.

9 THE WITNESS: Thank you.

10 (The Witness is excused)

11 THE COURT: Please bring in the
12 jury.

13 THE COURT OFFICER: Jury is
14 entering.

15 THE COURT: All rise, please.

16 Thank you, please be seated.

17 Please be seated, everyone.

18 THE CLERK: Case on trial, People
19 versus Whitehead, the jury and all parties are
20 present. Counsel waive the roll.

21 MR. KEAHON: I do.

22 MR. PEARL: People waive.

23 THE CLERK: Detective, I remind
24 you, you're testifying under oath.

25 CONTINUING CROSS-EXAMINATION

1 CROSS/Gabriele

2 BY MR. KEAHON:

3 Q. Detective, we're going to do this in five
4 minutes, okay?

5 A. Okay, Mr. Keahon.

6 Q. How many phones out at the house on the 92
7 Howland Avenue?

8 A. Three.

9 Q. The pictures that we introduced into
10 evidence, are they the only pictures that were taken
11 that you have?

12 A. That is all that Teaneck gave me.

13 Q. Okay. How many cell phones were taken out
14 of the house?

15 A. There were three out of the house.

16 Q. Could you show me where they are in these
17 pictures? It is that whole group, 136, 137, 138, et
18 cetera.

19 A. We have two pictures of cell phones, one
20 on the fireplace mantel, and one in the closet.

21 Q. Where is the picture of the third one?

22 A. I'm sorry. On People's 140 and 141.

23 There was no picture of the Sprint phone. From when
24 Teaneck forwarded me these pictures, there is not a
25 picture of it.

1 CROSS/Gabriele

2 Q. We don't have a picture of that?

3 A. That is correct.

4 Q. Was there a check approved and funded to
5 Christina Brooks?

6 A. I believe there was, yes.

7 Q. Where was it cashed?

8 A. I would have to look back at the Commerce
9 Bank records in order to find that out.

10 Q. Was it cashed?

11 A. I don't know. I don't recall.

12 Q. Who was it cashed by?

13 A. I don't know, I'd have to look at the bank
14 record.

15 Q. Oh. The T-Mobile phone that you talked
16 about, that you've seen on all the diagrams, we had
17 the representative testify from T-Mobile U.S.A.

18 Did you ever speak with him?

19 A. Did I ever speak with him.

20 Q. Yeah?

21 A. Just when he was upstairs in the office.

22 Q. Okay. Am I correct that they had records
23 for the method of payment, check, cash, credit card,
24 and when, where, and how payment was made, for the
25 T-Mobile phone, but it was never subpoenaed?

1 CROSS/Gabriele

2 A. The payment records were never subpoenaed.

3 Q. Yes?

4 A. No, I never did subpoena the payment
5 records, no.

6 Q. The Joseph Sweeney check, was that
7 deposited?

8 A. Yes, it was.

9 Q. Where and by whom?

10 A. It was deposited into the account of
11 Hillside Rides.

12 Q. Yes? Did someone cash it?

13 A. I believe Hillside Rides cashed it, yes.

14 Q. Who dropped it off at Hillside Rides?

15 A. I don't know who dropped it off at
16 Hillside Rides.

17 Q. Okay. Very quickly? The paperwork from
18 Land Rover Massapequa?

19 A. Yes.

20 Q. That was, it was submitted to
21 identification for fingerprints?

22 A. Yes.

23 Q. You asked that any fingerprints found on
24 the documents from Massapequa Range Rover, be
25 compared to Jay von Goldson, right?

1 CROSS/Gabriele

2 A. Yes.

3 Q. Who is he?

4 A. Jay von Goldson was a suspect, or he was
5 an arrestee. He was arrested in Manhattan, for
6 stealing the identity of a gentleman by the name of
7 Germaine Washington.

8 Q. Francis Rene, you asked?

9 A. Det. Peeker told me who he is.

10 Q. Who is he?

11 A. He was a co-defendant for Goldson on
12 another unrelated case.

13 Q. The -- am I correct that there was one
14 print unidentified when that comparison was made?

15 A. I believe there was, yes.

16 Q. In the Smithtown Range Rover, they also
17 asked that a comparison be done for fingerprints, on
18 that check for Jay von Goldson, right?

19 A. I'd have to look at it. Is that the
20 Smithtown.

21 Q. Yes?

22 A. I believe, yes, the Smithtown Land Rover
23 was Jay von Goldson as well.

24 Q. He has an a/k/a of Tremaine Washington?

25 A. Yes.

1 CROSS/Gabriele

2 Q. Also France Rene was compared to that,
3 right?

4 A. Yes.

5 Q. You also asked that my client, Lamar
6 Whitehead's, fingerprints be compared, did you not?

7 A. Det. Pecker requested that.

8 Q. And that was a negative?

9 A. Correct.

10 Q. And but it was positive on Kylie Copeland?

11 A. That is correct.

12 Q. We did a whole series of charts, 190, 209,
13 and on almost every chart, it showed multiple calls
14 between -- am I correct, that multiple exhibits
15 showed phone calls between subscriber, Lamar
16 Whitehead's cell phone, and the T-Mobile, right?

17 A. That is correct.

18 Q. Back and forth?

19 A. Yes.

20 Q. Who was on Lamar Whitehead's cell phone
21 when it was calling T-Mobile?

22 A. I wasn't there, Mr. Keahon, I don't know.

23 Q. Who was on the T-Mobile when it was
24 calling Lamar Whitehead's cell?

25 A. I don't know.

1 REDIRECT/Gabriele

2 MR. KEAHON: I have nothing
3 further. Thank you, very much.

4 THE COURT: Thank you. Any
5 redirect?

6 MR. PEARL: Yes, your Honor, thank
7 you.

8 REDIRECT EXAMINATION

9 BY MR. PEARL:

10 Q. Detective, Mr. Keahon asked you a series
11 of questions about Nigel DeFreitas?

12 A. Yes.

13 Q. How many times was Nigel DeFreitas's house
14 searched on August 5th, 2005?

15 A. Twice.

16 Q. And who did the first search?

17 A. Det. Peeker.

18 Q. Who did the second search?

19 A. I did.

20 Q. And what if anything was found in the
21 house, linking Nigel DeFreitas or Desmond DeFreitas,
22 to any of the identity thefts you were investigating?

23 A. Absolutely nothing.

24 Q. Did there come a time that you seized all
25 the computer systems in that house?

1 REDIRECT/Gabriele

2 A. Yes, Det. Connelly of the computer crimes
3 section did.

4 Q. Including computers both in the downstairs
5 and in the upstairs apartment of Desmond DeFreitas?

6 A. Correct.

7 Q. And Det. Connelly analyzed those
8 computers?

9 A. Yes, he did.

10 Q. Was there any information on any of the
11 computer systems recovered from 905 Cleveland St.,
12 linking either Desmond or Nigel DeFreitas to any of
13 the identity thefts you investigated?

14 A. There was nothing on any of the computers,
15 no.

16 Q. You indicated -- Mr. Keahon asked you a
17 series of questions about doing a search warrant at
18 92 Howland Avenue?

19 A. Correct.

20 Q. And he asked you questions about a BJ's
21 card, I believe, People's 166 in evidence?

22 A. Yes.

23 Q. Specifically, you -- on direct, you
24 indicated you found that card in the house, correct?

25 A. Correct.

1 REDIRECT/Gabriele

2 Q. Specifically where in the house was that
3 card found?

4 A. It was in the bags of mail in the hallway
5 closet.

6 Q. In the bag?

7 A. In the bag, yes.

8 Q. Mr. Keahon asked you a series of questions
9 concerning 177, a Sprint cell phone record, with an
10 electronic serial number on it?

11 A. Yes.

12 Q. As well as People's 49, cell phone records
13 in the name of Wojcieh Wachnik?

14 A. Yes.

15 Q. The electronic serial number number in
16 177, was compatible to the Wojcieh Wachnik cell phone
17 records, People's 49?

18 A. Yes.

19 Q. Where if anywhere was the Sprint cell
20 phone found, with that same electronic serial number
21 number?

22 A. 92 Howland Avenue, in Teaneck, New Jersey.

23 Q. Mr. Keahon asked you a series of questions
24 about handwriting on People's 110; I believe the
25 Briton Lawler check, do you recall that?

1 REDIRECT/Gabriele

2 A. Yes.

3 Q. Did you forward that check anywhere for
4 handwriting analysis?

5 A. Yes, I did.

6 Q. To where was it forwarded?

7 A. To Mr. JeffLuber of the crime lab.

8 Q. Before that, you forwarded it to Karen
9 Ensalata, for fingerprint analysis?

10 A. That is correct.

11 Q. Who if anyone's fingerprints were on that
12 check?

13 A. Briton Lawler, a \$64 dollars check,
14 People's 110. Kylie Copeland.

15 Q. Did you get results from Jeff Luber
16 regarding whose handwriting was on that check?

17 A. Yes, I did.

18 Q. Who if anybody's handwriting was on
19 People's 110?

20 A. The defendant's handwriting was on that
21 check.

22 Q. Mr. Keahon asked you a series of questions
23 about 176-A and -B, paperwork bearing the name of
24 Katherine Reid, do you recall?

25 A. Yes.

1 REDIRECT/Gabriele

2 Q. You indicated that you found that
3 paperwork, where?

4 A. In the bags, in the hallway closet of 92
5 Howland Avenue, Teaneck, New Jersey.

6 Q. What if anything was Katherine Reid's
7 paperwork in?

8 A. It was in an envelope, with other mortgage
9 paperwork.

10 MR. PEARL: Judge, may I have this
11 marked as People's 210 or 211.

12 MR. KEAHON: I have no objection to
13 People's 211 going straight into evidence,
14 your Honor.

15 THE COURT: There being no
16 objection, if you would mark it in evidence as
17 People's Exhibit 211, officer.

18 THE COURT OFFICER: People's 211,
19 marked and received in evidence.

20 (People's Exhibit 211, marked for
21 identification and received in evidence)

22 Q. Detective, do you recognize People's 211
23 marked for identification?

24 A. Yes, that is the envelope that I was
25 talking about, that that document was found in.

1 REDIRECT/Gabriele

2 Q. Are you talking about the Katherine Reid
3 document?

4 A. Yes.

5 Q. And that is 211 in evidence?

6 A. 211.

7 Q. And the Katherine Reid paperwork was
8 where, specifically?

9 A. In 92 Howland Avenue, Teaneck, New Jersey.

10 Q. I'm sorry. It was a poor question. Where
11 in reference to People's 211?

12 A. Inside the envelope.

13 Q. Detective, Mr. Keahon asked you a series
14 of questions about Kylie Copeland. He initially
15 asked you about did you question Valerie Rodriguez in
16 reference to Kylie Copeland. Do you remember those
17 questions?

18 A. Correct, yes.

19 Q. Did you ask Valerie Rodriguez if she knew
20 Kylie Copeland?

21 A. Yes, I did.

22 Q. What if anything did she tell you?

23 A. She never had heard of him before.

24 Q. A series of these identity theft
25 allegations were for the year 2004 and 2005, correct?

1 REDIRECT/Gabriele

2 A. Yes.

3 Q. Mr. Keahon asked you a series of questions
4 about the computer system, and tracking where it was
5 shipped, do you recall that?

6 A. Yes.

7 Q. Where was that -- what if anything did you
8 learn from your investigation?

9 A. That that particular computer, was shipped
10 from China, on December 7th of 2004, it was shipped
11 from a port in China on that particular day.

12 Q. And he asked you about the Microsoft
13 Windows XP software?

14 A. Yes.

15 Q. That had been installed 12/29/04?

16 A. Yes.

17 Q. And was there anything --

18 MR. PEARL: Withdrawn.

19 Q. In the year -- from December 2004 through
20 December of 2006, do you know where Kylie Copeland
21 was?

22 A. Yes, I do.

23 Q. Where if anywhere was Mr. Copeland?

24 A. He was in the Suffolk County jail and then
25 he was transferred to a state prison.

1 RE CROSS /Gabriele

2 Q. The series of E-Loan fraud allegations
3 that you are investigating, did any occur after Mr.
4 Copeland was in prison?

5 A. If I could check my notes.

6 MR. PEARL: With the court's
7 permission.

8 MR. KEAHON: I have no objection if
9 the district attorney tells him the answer.

10 A. The majority of the E-Loan applications
11 occurred after January 1st, 2005.

12 Q. When Mr. Copeland was incarcerated?

13 A. That is correct.

14 MR. PEARL: Thank you, detective.

15 MR. KEAHON: I have a couple of
16 quick ones. I have four minutes.

17 THE COURT: Within the parameters
18 of the redirect, if you please, Mr. Keahon.

19 MR. KEAHON: Yes, I will, judge.

20 RE CROSS-EXAMINATION

21 BY MR. KEAHON:

22 Q. You said the majority of them happened
23 after he was institutionalized, right?

24 A. Correct.

25 Q. How many of the fraud loans originated in

1 RECROSS /Gabriele

2 2004, before he was incarcerated?

3 A. Give me a second. I'll count them up for
4 you.

5 Q. Sure.

6 Q. I'm talking September, October, November?

7 A. Approximately eighteen.

8 Q. So eighteen of the fraud loans happened
9 while he was still on the street?

10 A. That is correct.

11 Q. Mr. Pearl didn't ask you that?

12 A. Just now.

13 Q. Yes?

14 A. I don't believe so, no.

15 Q. Okay. This card with Desmond DeFreitas'
16 picture on it, you indicated it was found in the bag?

17 A. In the bags in the hallway closet.

18 Q. But there were no pictures of it anywhere?

19 A. No.

20 Q. There is nothing in writing by you saying
21 you found it any specific place is there?

22 A. No.

23 Q. There is nothing by any other detective
24 saying they saw you found it in any particular
25 location?

1 RE CROSS /Gabriele

2 A. No, there is not.

3 Q. The Sprint phone that was just asked about
4 on redirect, pictures were taken of the interior of
5 92 Howland that you told us there is no picture that
6 was taken to memorialize that in fact the Sprint
7 phone was there?

8 A. That is correct.

9 Q. There is nothing on any written record by
10 you, by Teaneck, by anybody that indicates --

11 MR. KEAHON: Withdrawn.

12 I'll move on.

13 Q. The handwriting on the check that you said
14 came back to my client, were you here when Ms.
15 Ensalata testified in court before this jury?

16 A. Ms. Ensalata.

17 Q. Karen Ensalata?

18 A. She's the fingerprint expert.

19 Q. Yeah?

20 A. No, I was not here when she testified.

21 Q. Were you here when the testimony was given
22 by the handwriting expert, Mr. Luber?

23 A. No, I was not.

24 Q. You indicated on redirect you had a
25 conversation with Valerie Rodriguez about whether or

1 RECROSS /Gabriele

2 not she even knew Kylie Copeland?

3 A. Correct.

4 Q. That appears nowhere in the statement you
5 took from her, does it?

6 A. No, it doesn't.

7 Q. That appears nowhere in any note you made?

8 A. No.

9 Q. That appears nowhere in any report you
10 made?

11 A. No.

12 Q. That appears nowhere in the existence of
13 this world, by you or any detective or anybody else?

14 A. No.

15 MR. KEAHON: Okay.

16 Q. Document 211 in evidence, that envelope
17 that I just stipulated to go into evidence?

18 A. Correct.

19 Q. Is there anywhere on that envelope that
20 indicates anything was ever found in it?

21 A. No, there is not.

22 Q. Is there anywhere a note or a report by
23 you, by Teaneck, by anybody else in the world, that
24 says 176-A and -B was found within that envelope that
25 was presented to you, which you testified yes, it

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2 contained 176-A and -B was in there?

3 A. No.

4 MR. KEAHON: I have nothing
5 further. Thank you, detective, I appreciate
6 it.

7 THE COURT: Detective, this
8 concludes your testimony. You may stand down.

9 THE WITNESS: Okay.

10 (The Witness is excused)

11 THE COURT: Ladies and gentlemen of
12 the jury, I have a question. You'll be here
13 at 10:00 o'clock tomorrow morning, early.
14 Does that create a problem for anyone, 10:00
15 o'clock? Does that create a problem for
16 anyone?

17 Thank you.

18 MR. KEAHON: Judge, can we --

19 THE COURT: Do you need to approach
20 before the jury is discharged for the day?

21 (Side bar conference held off the
22 record)

23 THE COURT: 10:30 tomorrow morning.
24 This trial will resume. Once again, I'm
25 required to admonish you all.

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2 I remind you not to form or express
3 an opinion about the case until submitted to
4 you for deliberations. As I've told you, do
5 not discuss this case or any matter connected
6 to the trial amongst yourselves or with anyone
7 else. Nor may you allow it to be discussed in
8 your presence.

9 Don't read or listen to accounts
10 reported in the news media, don't visit or
11 view the place or places where the offense
12 charged was allegedly committed or any other
13 place involved in this case, and promptly
14 report to the court by way of coming to me
15 personally, through a court officer, any
16 incident within your knowledge involving any
17 attempt to influence any member of the jury.

18 Thank you all, once again, for your
19 hard work. See you tomorrow morning at 10:30.

20 (The Jury is excused)

21 THE COURT: Thank you, please be
22 seated.

23 Is there anything to place on the
24 record at this time before the court recesses
25 for the day?

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2 Mr. Keahon.

3 MR. KEAHON: Nothing, judge.

4 THE COURT: Thanks to counsel for
5 their hard work. Mr. Whitehead, see you
6 tomorrow morning, 10:30, for the resumption of
7 the case on trial. The court will adjourn to
8 reconvene tomorrow morning, at 9:30, for the
9 call of the calendar.

10 -oOo-

11
12 C E R T I F I C A T E

13
14 I, JENNIFER MAUE, a Senior Court
15 Reporter, do hereby certify, that the
16 foregoing matter is a true and accurate
17 transcription of my shorthand notes.

18 IN WITNESS WHEREOF, I have hereunto
19 set my hand.

20
21 
22 JENNIFER MAUE